



STATE OF NEW JERSEY

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

In the Matter of J.L., Department of
Military and Veterans' Affairs

CSC Docket No. 2020-297

Discrimination Appeal

ISSUED: NOVEMBER 8, 2019 (SLK)

J.L., a former Contract Administrator ³ with the Department of Military and Veterans' Affairs (DMAVA), appeals the decision of the Director of the Division of Equal Employment Opportunity/Affirmative Action (EEO) which did not substantiate his allegations 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, J.L. alleged that he had been discriminated against on an ongoing basis by DMAVA due to his ineligibility to apply for Principal Staff Officer, Special Staff Officer and General Staff Officer positions because he was not an active duty member of the New Jersey National Guard (National Guard). Moreover, J.L. alleged age discrimination because to be a member of the National Guard, one must be between the ages of 17 and 35.² Additionally, he alleged disability discrimination because the National Guard has height/weight and medical requirements that disqualify him for membership due to certain physical limitations that he has. The EEO indicated that although the State Policy prohibits discrimination based on membership in the Armed Forces of the United States (Armed Forces), the State Policy does not protect an individual from discrimination because he/she is not a member of the Armed Forces. Moreover, any age and/or

¹ Personnel records indicate that J.L. retired on August 31, 2019.

² J.L.'s State Policy complaint indicated that he is 66 years old.

physical requirement for membership in the Armed Forces or National Guard is based on federal mandates and is not covered under Civil Service regulations. Additionally, the EEO presented that a review of the Principal Staff Officer title series indicated that it was established to appoint military personnel to these titles. Such personnel are considered uniformed unclassified employees and are subject to discipline in accordance to military law and title. This title series was not established for civilian employees performing administrative functions within DMAVA as such civilian administrative positions are allocated to the Civil Service career service. Therefore, the EEO found there was insufficient evidence to establish a sufficient nexus that J.L.'s ineligibility to apply for the Principal Staff Officer, Special Staff Officer and General Staff Officer titles was based on his membership in a protected class.

On appeal, J.L. presents that the State Policy does not allow for third party harassment, which is unwelcome behavior based on membership in a protected class, which interferes with an individual's ability to do his or her job. He asserts that the National Guard does not use State standards for hiring and, instead, uses federal standards. However, J.L. argues that since the Principal Staff Officer position is a State position, State standards should apply. Further, since the National Guard discriminates in the hiring process by its published rules, he believes that membership in the National Guard should not be a requirement to obtain a Civil Service civilian position. J.L. argues that incumbents that serve in titles that can be placed into active duty based on military orders are subject to military standards. However, he contends that the Principal Staff Officer is a civilian Civil Service position and is not governed by military standards. He presents an e-mail from this agency that indicated that the subject titles are State positions within DMAVA and not National Guard active duty military positions. J.L. asserts that current Principal Staff Officers are performing civilian duties and not supporting any one particular active duty military unit and he provides an example of a specific employees who holds the Principal Staff Officer title whose duties he describes as being unrelated to supporting military operations. He believes that the requirement that Principal Staff Officers must be active members of the National Guard is a way to help the "Good old boy" system to remain so friends can help friends get State jobs. J.L. expresses bafflement that the State can maintain that membership in the National Guard, a discriminating organization using federal standards, is a requirement for a State title. He asserts that once employment is granted as a Principal Staff Officer title, that employee is no longer required to be a member of the National Guard.

In response, DMAVA reiterates that the State Policy prohibits discrimination against membership in the Armed Forces. However, non-membership in the Armed Forces is not a protected category under the State Policy. Moreover, the requirements for membership, including age and physical requirements, in the National Guard are set forth by federal guidelines and are not governed by Civil

Service regulations. As a result, it argues that the appellant failed to establish age, disability or liability for service in the Armed Forces discrimination under the State Policy. Further, a review of the subject job titles indicates that these titles were specifically created to appoint National Guard military personnel into these titles. These titles are in the unclassified service and subject to military rules and regulations. These titles were not created for career service civilians under Civil Service rules.

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 age, disability, and liability for service in the Armed Forces of the United States is prohibited.

*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.

In this matter, the Civil Service Commission (Commission) finds that although the State Policy protects against liability for service in the Armed Forces, the appellant's allegation that he was discriminated against because he lacked membership in a certain Armed Force, the National Guard, does not touch the State Policy as lack of membership in the Armed Forces is not a protected category under the State Policy. Additionally, a review of the title history for the Principal Staff Officer title series indicates that the purpose and intent behind the establishment of the title series was to establish positions for the appointment of military personnel and was *not* established for civilian employees performing administrative functions within DMAVA. Further, a review of the examples of work for the job specification for the Principal Staff Officer title series indicates that incumbents in this title series are performing military, and not civilian duties, such as the handling of congressional executive correspondence relating to the National Guard, representing DMAVA in conferences, seminars and meetings conducted for individuals and units of the National Guard, and assisting in the creation and implementation of special projects and studies pertaining to reorganization, activation, and stationing of National Guard Units in the State. Similarly, the job specification for General Staff Officer lists several examples of work concerning duties related to the National Guard. Additionally, the job specification for Special Staff Officer 1 indicates that incumbents in this title work under the direction of a Principal Staff Officer. The Commission also notes that DMAVA's internal vacancy announcements that J.L. submits both indicate that the Principal Staff Officer perform duties for the National Guard. Moreover, membership in the NJ National Guard is determined by federal guidelines and the age and physical requirements for membership are not governed by Civil Service rules and regulations. Therefore,

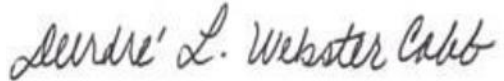
the Commission finds that J.L. failed to establish that he was subjected to a violation of the State Policy.

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 6th DAY OF NOVEMBER, 2019



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