



STATE OF NEW JERSEY

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

In the Matter of C.T., Department of
Human Services

CSC Docket No. 2020-460

Discrimination Appeal

ISSUED: NOVEMBER 21, 2019 (SLK)

C.T., an Administrative Analyst 1 with the Division of Aging Services (DoAS), appeals the decision of the Department of Human Services' Chief of Staff which did not substantiate her allegations to support a finding that she had been subject to a violation of the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy).

By way of background, C.T., who is African-American, alleged that C.F., a Caucasian Administrative Analyst 4, assigned her out-of-title duties as an act of retaliation for her previous 2015 complaint and her race. Additionally, she alleged that C.F., L.R., an African-American Division Director, and the DoAS denied her request for a reassignment as an act of retaliation for her 2015 complaint. The Department of Human Services' Office of Equal Employment Opportunity's (EEO) investigation consisted of 15 interviews and the review of eight relevant documents. The investigation found that DoAS supervisors, including C.F., did not exhibit a pattern of discriminatory behavior towards African-American employees with regards to work assignments, including out-of-title work. Specifically, the investigation revealed that other African-American employees, who had no prior EEO complaints, had also been assigned out-of-title work. Further, C.F. and L.R. provided a legitimate, non-discriminatory response to C.T.'s reassignment request by stating that the DoAS would agree to reassign her if she was offered another position within the Department. D.M., Director of Human Resources, confirmed

this response. Accordingly, the determination indicated that both allegations were unsubstantiated.

On appeal, C.T. requests to know who was interviewed as part of the investigation and what documents were reviewed. She indicates that the determination acknowledges that her union contract and Civil Service regulations were violated by assigning out-of-title work. C.T. questions whether the assigning of African-American employees out-of-title work on multiple occasions makes these violations acceptable. Concerning her request for a reassignment, C.T. indicates that L.R. advised that she could only move if there was a promotional opportunity within DoAS. Additionally, L.R. advised that there were no promotional opportunities for her unless she received more training. C.T. asserts that she performed higher-level duties that were originally performed by a Caucasian male Principal Claims Reviewer for 90 days. However, she did not receive monetary compensation nor was she offered promotional opportunities. C.T. claims that C.F. suggested that she quit. She states that this reprehensible behavior caused her to seek guidance from the Employee Assistance Service, who advised her to request to be transferred to another department. However, her request was denied. C.T. presents that in December 2018, C.F. assigned her the responsibility to perform the duties of a Hotline Phone Operator, which were out-of-title. She indicates these duties took 50 percent of her time and C.F. failed to include these duties in her 2019 Performance Assessment Review (PAR). C.T. then e-mailed C.F. about this omission and advised that she would refer her concerns of possible on-going harassment and retaliation to other offices. Within two days, this led to C.F. removing these duties from C.T.'s responsibility. C.T. asserts that since she never refused to perform this work, this hasty removal of duties led her to believe that C.F. was aware that she should not have assigned these duties to her, this assignment was done with malicious intent, and C.F. did not want these duties on C.T.'s PAR, thereby falsifying a PAR record. Additionally, C.T. claims that C.F. issued a five-day suspension against her based on false charges, which stayed in her personnel file for one-year. Eventually, the charges were reduced to a written reprimand. She claims that these charges irreparably damaged her character and reputation.

C.T. submits an e-mail to her union representative where she states that a higher-level employee either no longer wanted to perform the duties on his PAR or he was making too many errors, which led to those duties being assigned to her. C.T. submits this employee's PAR and her PAR to show that she was assigned the same duties. However, she complains that she performed these higher-level duties for 90 days without additional compensation. Thereafter, she complained to C.F. and these duties were taken from her. Additionally, she submits another e-mail to her union where she summarizes a meeting she held with C.F. and L.R. In the e-mail, C.T. states that C.F. falsely accused her of not liking people, which damaged her reputation. Further, she indicates that although L.R. advised her that she

needed additional training to be transferred and promoted, she was not given that training. C.T. states that C.F. implied that no one is willing to work with her because of fear that a grievance will be filed against them. However, C.T. claims there is no basis for anyone to feel that way if they do not violate State policies or union practices, such as assigning out-of-title work without compensation. Moreover, she submits her PAR where she indicated that she did not agree with it because it did not include all the duties she performed, such as being assigned the Business Hotline Phone Number. Finally, C.T. submits an e-mail to C.F., L.R. and others where she asserts that C.F. is attempting to undermine her contributions to the DoAS by not including all her duties in her PAR and complains that she is being harassed by being assigned more difficult and complex work than anyone one in her unit. She states that C.F.'s claim that C.T. was assigned this work because there was a backlog was not valid as her observations indicates that other staff and supervisors are not overwhelmed with work.

In response, the appointing authority indicates that the investigation revealed that the work that was re-assigned from a higher-level employee to C.T. was from an employee who retired from State service. When questioned how C.T. accessed this other person's PAR, C.T. indicated that she accessed it from a shared drive. Additionally, C.F. denied discriminating against C.T. and confirmed that she was advised by human resources that C.T. could laterally transfer to another position, if there was someone was willing to hire her. However, they were unable to find anyone willing to take her. C.F. explained that she did not include the Business Hotline Phone responsibilities that she assigned to C.T. in her PAR because they were temporary. She indicated that other duties that were to continue were included in her PAR. C.F. stated that the "mail log," which was assigned to C.T. had previously been performed by the higher-level employee. However, the higher-level employee took over this duty from an employee who was at a lower-level than C.T. C.F. explained that employees are assigned out-of-title work due to a shortage of staff. L.R. also confirmed that employees are assigned out-of-title work due to a shortage of staff. L.R. explained that tasks are assigned to employees based on their ability to perform the tasks and C.T. was assigned certain duties based on her proficiency with Excel. The investigator also interviewed 11 employees (10 African-American females and one Caucasian male) who C.F. and L.R. indicated were assigned out-of-title duties. The investigation revealed that none of these employees previously filed an EEO complaint nor did any of them feel as if they were retaliated against. Only two of the employees indicated that they were aware that they had been assigned out-of-title work and neither of these employees (a Caucasian male and an African-American female) expressed any issues with the out-of-title work. One of the employees indicated that she felt that she was assigned an excessive amount of work which interfered with her ability to perform successfully. However, this employee indicated that she did not feel that race played a role in the assignment and some of her tasks were reassigned after she spoke with her direct supervisor. Further, this employee concluded that she

was assigned additional duties because the unit was short staffed. It presents that while C.T. could request a classification review of her position, there is nothing discriminatory about being assigned out-of-title work so that operational needs are met. Further, there was no evidence that out-of-title assignments were based on race. Additionally, the mere fact that C.T. previously filed an EEO complaint does not mean that her out-of-title assignments were in retaliation as out-of-title work was assigned to many employees, and those employees had not previously filed EEO complaints. Moreover, the investigation revealed that C.T. could move to another unit if she was able to find another employment opportunity. Accordingly, the investigation was unable to substantiate the allegations.

In reply, C.T. asserts that Civil Service guidelines for PARs indicate that if a job duty becomes a significant part of one's duties, it should be included in one's PAR. As the Business Hotline Phone duties took up 50 percent of her time, C.T. argues that these duties should have been included in her PAR. Additionally, C.T. states that she was not advised that when she was first assigned these duties that these duties were temporary. Further, as the Business Hotline Phone calls were not forwarded to others, she received complaints when she was not available to answer the phone. C.T. indicates that this was either an attempt at retaliation, harassment or poor management. Despite these complaints, C.T. confirms that she did enjoy helping others while answering the Business Hotline and, therefore, she was surprised that C.F. took this duty away from her. She only wanted C.F. to document this duty in her PAR. C.T. states that she is unfairly reassigned work while others socialize. She claims that there was one possible opportunity where she could have laterally transferred, but that opportunity was thwarted.

In further response, the appointing authority states that this matter is limited to whether C.T. was subject to discrimination and retaliation and the issue as to whether a temporary assignment should have been included in her PAR should be addressed in the appropriate forum. Concerning C.T.'s statement that she was unfairly disciplined, the appointing authority submits documentation showing that she indicated that she worked seven hours one day when she only worked six and one-half hours. Therefore, there is no evidence that this discipline was harassment and her assertion undermines her credibility.

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

Initially, it is noted that an employee's performance evaluation is confidential information. As C.T. has not presented any evidence that the PAR of the higher-level employee that she submits on appeal was voluntarily provided to her, the Civil Service Commission (Commission) will not consider this submission in its determination.¹

In this matter, the investigation involved interviewing 15 employees, including 10 African-American employees (11 employees overall) who were assigned out-of-title work and reviewing eight relevant documents. None of these employees previously filed an EEO complaint, none indicated that they felt that they were assigned out-of-title work due to their race, and the documents did not provide evidence that any employee was assigned out-of-title duties due to anything other than shortage of staff. While C.T. complains that she does not know the names as to who was interviewed or what documents that the investigator reviewed, C.T. has not presented one witness or document that confirms, or at least could potentially confirm, that the reason C.T. was assigned out-of-title work was due to her race or retaliation. Further, to protect the privacy and confidentiality of witnesses, C.T. is not entitled to the details of the investigation under the State Policy. Moreover, the appointing authority has provided sufficient details regarding its investigation in both the determination letter and in its response to this appeal.

With respect to C.T.'s comments that the assignment of out-of-title work was in violation of Civil Service regulations, while Civil Service regulations discourage the assignment of out-of-title work, the assignment of out-of-title work for legitimate business reasons, such as a shortage of staff, is not prohibited under Civil Service regulations, including the State Policy. Whether the assignment of this out-of-title work violated her union contract is not within the jurisdiction of the Commission. Regardless, even if it did, this does not mean that the reason for the out-of-title work assignment was based on discrimination or retaliation in violation of the State Policy. In reference to C.T.'s statements regarding the omission of her out-of-title Business Hotline duties from her PAR, Civil Service regulations do not specifically require that certain duties be included in a PAR. Instead, the supervisor and the subordinate are to agree upon the content of the PAR, and if the subordinate disagrees, the subordinate can indicate disagreement on the PAR, as was done here. Further, while C.T. disagrees with C.F.'s decision to omit these duties from her PAR, C.F. explained that she omitted these duties because they were temporary. As such, there is no evidence that C.F.'s decision was based on discrimination or retaliation and disagreements between co-workers cannot sustain

¹ Moreover, the Commission is concerned as to how the appellant gained access to this document. Absent the employee voluntarily providing the appellant a copy of the PAR, she should not have been able to access it for any purposes. If PARs are available to employees who do are not responsible for completing those evaluations via, as reported by the appellant, a "shared drive," such a drive should be discontinued. If the appellant obtained a copy in some other manner, the appointing authority may wish to take some futher administrative action.

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). Moreover, instead of C.T. expressing concern with C.F. about the out-of-title Business Hotline duties and seeing if they could develop a mutual agreeable solution, C.T. indicated to C.F. that she considered the assignment of these duties to be on-going harassment and retaliation. Therefore, the Commission is perplexed by C.T.'s surprise that C.F. took away these duties from her and there is no evidence that this decision was based on discrimination or retaliation.

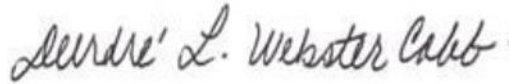
Additionally, contrary to C.T.'s statement that her discipline was based on discrimination or retaliation, the evidence indicated that she falsified her timesheet. Further, contrary to her statements that she was reassigned duties from a higher-level Caucasian male who no longer wanted to perform certain duties or was unsatisfactorily performing these duties, the evidence indicated that she was reassigned these duties because this employee retired and C.T. had the skill set to perform these duties. The investigation also revealed that these duties had previously been performed by lower-level employees. Regardless, if C.T. believes that she is primarily performing higher-level duties, she can file for a classification review of her position. However, there is no evidence that these duties were reassigned to her due to discrimination or retaliation. Finally, the investigation revealed that the appointing authority has not denied C.T.'s request to be reassigned. Instead, it advised C.T. that she could move if another unit was willing to hire her, which is a legitimate business response. However, the record indicates that C.T. has not provided, with any specificity, any opportunity where another unit agreed to hire her, but the appointing authority denied the request. In other words, C.T. has not provided one scintilla of evidence to show that any actions taken were based on C.T.'s race or in retaliation for her filing a prior EEO complaint and 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 EEO's investigation was prompt, thorough and impartial and C.T. has not met her burden of proof.

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 19th DAY OF NOVEMBER, 2019



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