



STATE OF NEW JERSEY

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

In the Matter of R.J., Department of
Banking and Insurance

CSC Docket Nos. 2019-468 and 2019-
1118

Discrimination Appeal

ISSUED: MARCH 8, 2019 (SLK)

R.J., a former Supervisor of Licensing, Banking and Insurance¹ with the Department of Banking and Insurance, appeals the decisions of the Director, Division of EEO/AA, Civil Service Commission (EEO), 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). These appeals have been consolidated due to common issues presented.

By way of background, R.J., an African-American, filed a complaint with the appointing authority alleging that J.M., a Caucasian Manager 1, Insurance (Manager 1), G.S., a Caucasian Assistant Insurance Commissioner, and D.F., a Caucasian Senior Executive Service, discriminated against her based on age² and race and retaliated against her. Thereafter, the matter was transferred to the EEO for a determination. Specifically, R.J. alleged that, due to her race, she was not permitted to supervise a unit to “eliminate” her from competing for the Manager 1 position, where both she and J.M. applied.³ R.J. also claimed that J.M. did not have

¹ Personnel records indicate that R.J. retired on December 31, 2018.

² Although the EEO’s August 7, 2018 determination indicates that R.J. alleged age discrimination, there is no discussion of age discrimination in the determination letter or on appeal.

³ Agency records indicate that a female Caucasian was the first ranked, J.M. was the second ranked, and R.J. was the third ranked eligible on the Manager 1, Insurance (PS53691), Department of Banking and Insurance list. On certification PS1712122, the first ranked eligible was bypassed, J.M. was appointed, effective December 23, 2017, and R.J. was not appointed.

a Bachelor's degree. Additionally, R.J. alleged that she was not permitted to attend a Security Insurance Licensing Association (SILA) conference despite being invited by the organization. She claimed that she overheard a co-worker who stated that the appointing authority did not want African-American employees representing it. Further, she alleged that she was disciplined to deny her opportunities and in retaliation for complaining about J.M.'s management decisions to Human Resources and Ethics. Moreover, R.J. alleged that J.M. was tampering, delaying, and monitoring her e-mails to control her. Also, R.J. alleged that J.M. had sexual/romantic relationships with three co-workers and she claimed to have witnessed J.M. and a subordinate engaged in sexual activity in his office, which resulted in the subordinate receiving preferential treatment. Finally, R.J. alleged that the appointing authority's failure to acknowledge her Master's degree in Insurance Management during its September 2017 Employee Recognition Program was discriminatory.

The investigation revealed that the hiring process after the promulgation of the list for the Manager 1 promotion was objective as the candidates were provided questions in advance, along with the scoring criteria and J.M. was selected instead of R.J. based on his superior written communication skills, quality of reports and R.J.'s reputation as being difficult to manage. Additionally, J.M. did possess a Bachelor's degree. Therefore, the investigation concluded that the decision to promote J.M. instead of R.J. was based on managerial prerogative.

Additionally, the investigation revealed that at a past SILA conference, R.J. was heard providing incorrect information to an attendee while an official panelist. Management also made the business judgment that having more than one appointing authority representative would be "repetitive" and "not effective," which is why R.J. was not permitted to attend. Further, R.J. was issued three separate Preliminary Notices of Disciplinary Action (PNDA), which led to her receiving an official written reprimand and her agreeing to a five-day suspension in lieu of appealing the last two PNDAs. The investigation found no evidence that disciplinary action was taken to impact the selection of the Manager 1 position, as R.J. was interviewed for the position on October 13, 2016, which was five months before the first PNDA was issued on March 10, 2017, and her discipline was in response to workplace behavior and not retaliatory. Moreover, the investigation found that J.M. lacked the authority or access to monitor or tamper with R.J.'s e-mail and the Assistant Commissioner of Administration would know about such activity, but there was no evidence that anyone in that title knew of such activity. Additionally, R.J. failed to provide any corroborating witnesses or other evidence that J.M. was having improper relationships with subordinates and there was no evidence that any promises were made or materialized to R.J.'s or any employee's detriment based on his alleged improper relationships. Finally, the investigation found the appointing authority recognized at least five employees of different races and that R.J. failed to inform the Employee Recognition Program or the

administration that she received her Masters' degree. Consequently, in its August 7, 2018 determination letter, the EEO indicated that R.J.'s allegations could not be substantiated. Further, in its August 29, 2018 letter, the EEO indicated that it learned that R.J. had breached confidentiality by discussing this matter with J.M. and warned her that any additional violations would be referred for corrective action.

Thereafter, R.J. filed new allegations of race discrimination and retaliation, as well as ethics violations directly with the EEO, against J.M., G.S., and P.H., a Caucasian Supervising Administrative Analyst. The ethics violations consisted of the accused making certain business decisions, without consulting with R.J. despite her education, credentials, and experience, where she concluded that the accused's actions lacked business aptitude, her knowledge, and were without justification. Further, R.J. claimed that her exclusion from the decision-making process was due to her race and she was retaliated against for addressing these matters with management. In the EEO's October 1, 2018 determination letter, it concluded that there was no nexus between the State Policy and the new issues raised by R.J. as it was management's prerogative to not discuss these business decisions with her. Further, her claim of retaliation did not touch the State Policy as she did not present that she experienced an adverse employment consequence because she filed a prior State Policy complaint.

On appeal, R.J. states that the main issue is retaliation for her filing ethics complaints against J.M. She claims that J.M. denied her supervision of selective staff members, which included overseeing employees handling waivers and others were chosen for personal reasons. R.J. contends that J.M. limited her duties to gain leverage and to eliminate her from contention for the Manager 1 position. R.J. denies that she was a problem employee and presents her credentials, which include two degrees and four insurance designations, to show that she was the right employee for the promotion. She claims that J.M. soiled her reputation by filing disciplinary actions while she defended herself from his retaliation. R.J. contends that J.M. made false claims that she was an incompetent supervisor to gain superiority for the promotion. She argues that the appointing authority's justification for promoting J.M. on the basis that her speech and writing was insufficient, is a typical race-based generality. R.J. highlights that her unit mostly consists of African-American employees performing clerical duties and asserts that there has been a history of discrimination within the department. She characterizes J.M. as being someone with no special talents who was promoted to be a "Plantation Overseer assigned with the tasks of keeping the Blacks in line." R.J. asserts that the accusation that she gave out false information on the SILA panel is false. She indicates that her claim that J.M. did not have a Bachelor's degree was based on her observations of his performance. Regardless, she emphasizes that she has a Master's degree and four insurance designations. R.J. asserts that it is a known fact that the appointing authority uses a shared computer system and

employees' e-mails can be viewed and monitored upon management request. She states that J.M. used this tactic to stalk, intimidate and control her. R.J. contends that J.M.'s inappropriate personal relationships are common knowledge. In a meeting with J.M., G.S. and herself, R.J. questioned J.M. about one of his relationships after witnessing unprofessional overtures that brought about some discomfort to her and remaining staff. She claims that J.M. responded, "D. works for me and will always work for me." R.J. argues this was an inappropriate statement as employees are generally free to pursue options as they present themselves. Therefore, she took this statement as an acknowledgment by J.M. that he had an inappropriate relationship with D. Finally, J.M. presents that she had an appointment with a Psychologist and claims that J.M. attempted to stalk his way into the conversation, presumably in a further attempt to report that she was discussing confidential matters with unauthorized persons. She defines J.M.'s stalking as being "somewhat present in a conversation without being present." R.J.'s contends that J.M. uses telepathy, as do other appointing authority employees, to harass and intimidate employees.

In response, the EEO reiterates the findings that there was no evidence of discrimination concerning why R.J. was not promoted, not given certain supervisory responsibilities or not allowed to attend the SILA conference. Instead, these were managerial decisions based on business judgment. Further, the discipline that she received was in response to her workplace behavior and there was no evidence that it was calculated to impact her potential promotion to Manager 1, especially since the first PNDA was issued five months after she interviewed for the position. Additionally, there was no evidence that J.M. monitored R.J.'s e-mails, and, even if he had, this would have been within his management authority. Further, there was no evidence that J.M. engaged in sexual activity which resulted in favorable treatment or that anyone was promised or received supervisory responsibility to R.J.'s or anyone else's detriment. Additionally, there was no evidence that the 2017 Employee Recognition Program's failure to recognize her Masters' degree was due to racial discrimination. The EEO states that R.J.'s characterization that J.M.'s promotion was "similar to that of a Plantation Overseer" to keep "Blacks in line" is highly unprofessional and derogatory. It presents that R.J.'s alleged ethics violations do not touch the State Policy, that her claim that she was "stalked" through the use of telepathy is meritless, and the investigation did not reveal that any actions were taken against her in retaliation for a prior State Policy complaint.

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) provides, in pertinent part, the retaliation against any employee who files a State Policy complaint 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, the Civil Service Commission (Commission) notes that while R.J. complains that she was not promoted due to her race, it was a Caucasian female who was the first ranked candidate who was bypassed for the appointment to the Manager 1 position in favor of J.M., and not R.J., as J.M. was the second ranked candidate and R.J. was ranked third. Further, while the appellant's education and credentials are acknowledged, these achievements do not automatically designate her as a superior candidate. *See In the Matter of William R. Thompson* (CSC, decided November 15, 2017). Regardless, R.J. has not provided once scintilla of evidence, such as a corroborating statement from a witness or other documentation, to show that she was not promoted, not given certain supervisory responsibilities, not consulted on certain business decisions, or not allowed to attend the SILA conference due to her race. Similarly, she has not provided any evidence to support her claims that J.M. was monitoring her e-mail or that he had inappropriate relationships with subordinate co-workers, which led to her receiving an adverse employment consequence. 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). Instead, the investigation revealed legitimate business reasons concerning why R.J. was not promoted and why she was not authorized to attend the SILA conference. Moreover, the investigation revealed that the 2017 Employee Recognition Program's failure to acknowledge her Masters' degree was due to her failure to inform the Program or the administration that she received it. Additionally, her belief that management should have consulted with her due to her claimed superior credentials and knowledge concerning certain business decisions that she believed management handled improperly, does not touch the State Policy. Additionally, R.J. has not provided any evidence that she was retaliated against for her filing prior State Policy complaints and the investigation revealed that she was first disciplined nearly five months after she interviewed for the Manager 1 position and the discipline was not in retaliation, but was based on her workplace behavior. Finally, her claim that J.M. used telepathy to "stalk" her is meritless and does not touch the State Policy.⁴ Therefore, the Commission finds that the EEO's investigation was prompt, thorough and impartial and R.J. has not met his burden of proof.

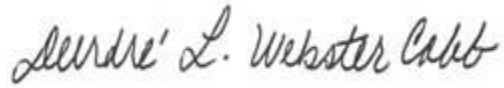
ORDER

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.

⁴ The Commission also notes that R.J.'s allegation on appeal regarding J.M.'s promotion being "similar to that of a Plantation Overseer assigned with the tasks of keeping the Blacks in line" is highly inappropriate. However, since R.J. has retired, no further action is needed.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 6th DAY OF MARCH, 2019



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