



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

In the Matter of E.W., Department of  
the Treasury

CSC Docket No. 2019-981

Discrimination Appeal

ISSUED: JANUARY 31, 2020 (SLK)

E.W., a Senior Postal Clerk with the Department of the Treasury, appeals the decision of the Director, Division of EEO/AA, Civil Service Commission (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, E.W., an African-American, filed a complaint with the appointing authority alleging that M.T., a Caucasian Director of Administration, A.S., a Caucasian Employee Relations Coordinator, M.F., a Caucasian former Manager, Capitol Post Office, D.W., a Caucasian Manager 4, Human Resources, G.B., an African-American Health and Safety Officer, Division of Property and Management and Construction, P.T., an African-American Assistant Division Director, Human Resource, and J.P., an Asian Personnel Assistant 2, Human Resources discriminated against him based on a disability and race.<sup>1</sup> Thereafter, the matter was transferred to the EEO for a determination. The investigation revealed that the appointing authority had a safety policy that employees in the post office had to wear a safety work boot with certain specifications. On July 24, 2017, E.W. provided his supervisor M.F. a doctor's note indicating that he needed

<sup>1</sup> The EEO's determination does not indicate that the E.W. alleged racial discrimination. However, E.W.'s appeal does allege racial discrimination. Further, as part of E.W.'s appeal, he submitted a handwritten note, dated December 13, 2017, where he stated in follow-up from an interview with the appointing authority's EEO that he believed he was subject to racial discrimination.

an accommodation that his work boot had to be extra wide and have extra depth. For reasons unknown, M.F. did not provide the Leave Management Unit (LMU) E.W.'s doctor's note until October 5, 2017. Thereafter, the LMU sent E.W. several e-mails in October 2017 indicating that it needed clarification concerning his request. However, as E.W. did not have regular access to e-mail at work, he did not see them.

In a letter dated October 30, 2017, D.W. informed E.W. that he could receive an accommodation for his safety work boot. However, the appointing authority needed to know the size he was requesting and clarification as to the meaning of "extra depth." The letter indicated that a safety shoe specification was enclosed that he could share with his doctor. Subsequently, on November 2, 2017, E.W. was provided personal protective equipment (toe covers) that he could wear in the alternative to the specified safety work boot. Further, on November 8, 2017, the LMU indicated by letter to E.W. that it received his doctor's note stating that he needed an extra-wide, extra-depth safety work boot, Nautilus brand, but that no model number or size was provided. On November 9, 2017, M.F. circulated a memorandum indicating that employees were required to wear safety boots. On November 13, 2017, E.W. was sent home for his refusal to wear the State issued safety boot or toe covers and he used a personal day. Additionally, on November 16, 2017, Human Resources orally advised E.W. that his doctor needed to provide a model number and to clarify the meaning of "extra depth." Further, P.T. ordered E.W. back to work on November 20, 2017. However, upon return, E.W. was sent home for failing to wear the required safety work boot or toe covers and was docked a day's pay. On November 21, 2017, E.W. returned to work and was given instructions as to how to wear the toe covers, which he did. On November 30, 2017, the LMU approved E.W.'s request for an alternative safety work boot and, on December 5, 2017, E.W. received the requested safety boots, which fit, and he now wears. The investigation revealed that although M.F. delayed in presenting E.W.'s request for an alternative safety work boot to the LMU, there was no evidence that he was discriminating against E.W. based on his disability. Similarly, the investigation found that there was no evidence that any one from Human Resources, Employee Relations, LMU or any other appointing authority employee acted against E.W. due to his disability when it sent him home, docked his pay, or took any other actions during this process.

On appeal, E.W. states that he spoke with G.B. in September 2017 to inquire about the status of his accommodation, she replied that she would follow-up on the matter, but she never got back to him. E.W. acknowledges that the LMU did e-mail him in October 2017, but he emphasizes that he does not have regular access to e-mail at work. E.W. states that the safety specifications were not included with the October 30, 2017 letter that he received from the LMU requesting clarification. E.W. indicates that on November 2, 2017, he requested that he be shown how to apply the toe covers as neither he nor M.F. knew how to put them on correctly,

which would have created a hazard if he wore them incorrectly. E.W. presents that he did speak with a Human Resources representative concerning the meaning of "extra depth" and he attempted to speak with D.W. on November 20, 2017 concerning the meaning of "extra depth." Additionally, E.W. highlights that D.W. informed him on November 28, 2017 that after reviewing his November 18, 2017 doctor's note, she was going to expand the list of acceptable safety work boot makes and models. E.W. claims that he complied with all requests in his attempt to receive an accommodation and that he was only met with intimidation and a lack of clarity as to why it took over three months to accommodate his request. E.W. states that he filed a "group grievance," however, after speaking with others, he dismissed it. E.W. attaches documentation that he submitted with his grievance that included his concerns and requests regarding the requirement to wear safety work boots. Additionally, he submits pictures of notes that were posted to advise staff that safety work boots were required and that all medical exceptions had not been approved at that time.

In response, the EEO states that although M.F. may have failed to timely provide the LMU with E.W.'s doctor note, E.W. had notice as early as July 24, 2017 that he needed an accommodation, E.W. had numerous opportunities to communicate with the LMU before his pay was docked on November 20, 2017 and there is no evidence that any delay in providing his safety boot was due to his disability. Further, it states that there was no evidence that E.W. attempted to contact the LMU prior to it learning about his request on October 5, 2017, and there was no evidence that he attempted to follow-up with the LMU prior to November 8, 2017. Additionally, the EEO asserts that even if it is true that E.W. did not have access to his e-mail at work, a reasonable person should have kept in contact with the LMU. With respect to E.W.'s allegation that he was being discriminated against based on his disability, the LMU provided documentation that several employees, and not just E.W., were denied their requests for accommodations, and therefore, there is no evidence that he was treated differently due to his disability. Moreover, the photographs that E.W. provided of individuals with a different "ethnic description" which show that some employees were wearing athletic footwear while others were wearing work boots, is not conclusive evidence that employees were being discriminated against due to race. Also, there is no evidence that E.W. requested or was denied instructions to put on toe covers and no evidence of intimidation.

In response, E.W. presents that he submitted his request for an accommodation in July 2017 and made multiple requests to management and Human Resources concerning the status of his request. However, as there was no resolution, he filed a grievance on October 6, 2017. Further, it was not until he received the October 30, 2017 letter that he had notice that clarification was needed for his request. Thereafter, on November 1, 2017, M.F. posted a sign that management had denied all medical requests for safety boots until an accepted note

was provided and, on November 9, 2017, M.F. provided a formal memorandum that safety boots would be mandatory, effective November 13, 2017. Thereafter, on November 13, he was sent home for not wearing the safety boots and, on November 16, he received a letter that he was in violation for not wearing the State mandated safety boots while his accommodation was being reviewed. On November 17, 2017, he received notice that his November 8 letter was received, but that his physician still needed to provide his make and model number, and on November 20, 2017, he was sent home for being in noncompliance. On November 21, he received instructions for the toe covers and he then wore them. Further, he received his approved safety boots on December 5. On December 6, he met with the appointing authority's EEO, which interviewed him and facilitated him in filing a discrimination complaint. E.W. argues that it was a violation of his rights under the American with Disabilities Act (ADA) that he was sent home and docked pay. He presents that two Caucasian employees had their requests for a medical accommodation responded to within two weeks, while it took three months for him to receive a response. Therefore, he implies that the delay in him receiving a response to his request for an accommodation was based on race.

## 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 or disability 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, it is unclear as to why M.F. waited over two months to present E.W.'s request for an accommodation to the LMU, why the appointing authority and E.W. had an issue concerning the instructions on wearing toe covers, and why E.W. and the appointing authority had difficulty in finalizing the details when E.W. sought an accommodation. However, no evidence has been presented to indicate that the reasons for the appointing authority's actions were based on E.W.'s disability or race. The mere fact that two Caucasian employees received a quicker response from the LMU does not automatically suggest that the reason for M.F.'s delay was due to the E.W.'s race. 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). Further, the Civil Service Commission (Commission) notes that although these two employees received a quicker response, it appears that their initial requests were also not approved as M.F. subsequently posted a sign in November 2017 indicating that no accommodations had been approved at that time. Moreover, E.W.'s request for an accommodation was accepted and the appointing authority did communicate to E.W. in its October 30, 2017 letter that he could receive an accommodation. However, it indicated that it needed clarification as to his shoe size and the meaning of "extra depth." Finally, E.W.'s claim that the appointing authority inappropriately sent him home several times, which caused

him to lose vacation time and have his pay docked, absent a finding that these actions occurred based on a violation of the State Policy, is outside the scope of this matter. Moreover, E.W. has not provided any witnesses that were not interviewed, any documents that were not reviewed or any other evidence that could potentially lead to the conclusion that the appointing authority's actions were based on E.W.'s membership in a protected class. Therefore, the Commission finds that the EEO's investigation was prompt, thorough and impartial and E.W. 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.

DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION ON  
THE 29<sup>th</sup> DAY OF JANUARY, 2020



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