



STATE OF NEW JERSEY

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

In the Matter of D.S., Department of
Health

Discrimination Appeal

CSC Docket No. 2020-1283

ISSUED: NOVEMBER 6, 2020 (ABR)

D.S., a Secretarial Assistant 2, Non-Stenographic with the Department of Health (DOH), appeals the determination of the Chief of Staff, DOH, which found 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).

By way of background, on November 30, 2018, L.A., an African American Assistant Commissioner, reported to the DOH's Office of Diversity and Equality Services (ODES) that the appellant, a Caucasian, was telling other employees that L.A. was racist and did not interview her for a position as her personal secretary in the Secretarial Assistant 1 title because she was Caucasian. L.A. denied that race was a factor in the decision not to interview the appellant. Rather, L.A. indicated that she did not select the appellant for an interview because of her limited experience. On January 14, 2019 L.A. advised the ODES that the appellant was still telling other employees that she did not interview the appellant for the position because of her race. In response, the ODES conducted an investigation, which consisted of the review of pertinent documents and interviews of L.A. and the appellant.

During a February 5, 2019 interview with the ODES, the appellant acknowledged that she had told other employees that she felt that L.A. discriminated against her by declining to interview her for the subject vacancy. The appellant stated that she indicated to these employees that she was "half joking, half not joking." She asserted that she should have been interviewed based upon her prior experience within the DOH's Division of Family Health Services (FHS). In this

regard, she stated that she had been in the Assistant Commissioner, FHS's office for 12 years and that she believed she knew how everything ran in that office. The appellant acknowledged that because she was not selected for an interview she told another employee that "maybe [she was] not the right color." The appellant denied ever hearing L.A. make any comments that could be perceived as racist. She further stated to the ODES that L.A. "either does not like [her] or there is a racial issue as to why she did not interview [her] for the position," but that she did not "have any proof" that her belief was true.

During an April 30, 2019 interview with the ODES, L.A. denied that race was a factor in her decision not to interview the appellant. L.A. maintained that the appellant was not selected for an interview because she did not believe that the appellant had the extensive experience she was looking for in a personal assistant. Specifically, she stated that she was looking for an employee who had held a high-level position for a long period of time.

The ODES also reviewed documentation from the selection process for the subject position. The review revealed that 13 candidates responded to the vacancy announcement and that four candidates were interviewed for the position. The candidate recommended for appointment identified as Caucasian with Hispanic or Latino ethnicity. The candidate in the number two position identified as Caucasian. The candidate in the number three position did not disclose their race or ethnicity. The candidate in the fourth position listed their race as African American. The ODES concluded that the evidence that two Caucasian candidates were interviewed refuted the appellant's allegation that she was not considered because she was Caucasian. The ODES also reviewed L.A.'s involvement in interview panels used to fill vacancies in two other positions. It found that the interview panels interviewed Caucasians for both positions and recommended a Caucasian candidate for one of those positions. Based upon the foregoing, the ODES did not substantiate the appellant's allegation that L.A. violated the State Policy by subjecting her to differential treatment on the basis of her race.

On appeal to the Civil Service Commission (Commission), the appellant argues that the appointing authority's decision not to interview her for a Secretarial Assistant 1 position violated the State Policy. In this regard, she submits that she was highly qualified for the position, given that she had 12 years of experience in the same office and she maintains that L.A. has consistently favored African Americans over Caucasians with respect to promotions and assignments. She further asserts that she is qualified for the position, as her assigned duties as a Clerk Typist, as a Senior Clerk, and as a Principal Clerk Typist¹ included providing backup coverage in

¹ The appellant served as a Clerk Typist from November 2004 to April 2005; as a Senior Clerk from April 2005 to August 2010; and as a Principal Clerk Typist from August 2010 to November 2016. The appellant was permanently appointed to the title of Secretarial Assistant 2, effective November 26, 2016.

the Office of the Assistant Commissioner. In support, she submits, in relevant part, copies of her Performance Assessment Reviews for rating cycles ending in 2005, 2007, and 2009 through 2013.

In response, the ODES argues that its investigation demonstrates that there was no evidence that L.A. discriminated against the appellant on the basis of her race. It avers that, while the appellant has expressed disagreement with its conclusion, she has not submitted any evidence which would warrant overturning its determination. In particular, it submits that L.A. indicated that she “wanted someone with experience and that had been working as a Secretary Assistant 2 position with extensive experience,” and that the candidates selected for interviews met that criteria. L.A. further stated that the appellant did not possess the same level of experience. Moreover, the ODES noted that because two candidates who identified as Caucasian were interviewed for the subject position, it evidences that race was not a factor in L.A.’s decision not to select the appellant for an interview.

CONCLUSION

It is a violation of the State Policy to engage in any employment practice or procedure that treats an individual less favorably based upon any of the protected categories. *See N.J.A.C. 4A:7-3.1(a)3*. The protected categories include 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. *See N.J.A.C. 4A:7-3.1(a)*. Moreover, the appellant shall have the burden of proof in all discrimination appeals. *See N.J.A.C. 4A:7-3.2(m)4*.

The Commission has reviewed the record in this matter and finds that an adequate investigation was conducted and that the investigation failed to establish that the appellant was not considered for appointment because of her race. In this regard, the appellant denied hearing L.A. making any race-based comments and the appellant failed to offer any specific basis for her belief that L.A. did not consider her for appointment because of her race. Moreover, the record shows that candidates who were interviewed were selected on the basis of their experience. Further, of the candidates who were interviewed, two identified as Caucasian, one of whom was recommended for the position. Furthermore, the ODES reviewed records from the selection process for two other vacancies where L.A. was a member of the interview panel and it found that a Caucasian employee was the recommended candidate for one of those positions also. Accordingly, the appellant has failed to sustain her burden of proof and there is no basis to disturb the determination of the Chief of Staff, DOH.

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 4TH DAY OF NOVEMBER 2020

Deirdre L. Webster Cobb

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