



**STATE OF NEW JERSEY**

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

In the Matter of S.O., Department of  
Environmental Protection

CSC Docket No. 2020-1685

Discrimination Appeal

**ISSUED:** May 1, 2020 (SLK)

S.O., an Environmental Engineer 3 (EE3) with the Department of Environmental Protection, appeals the decision of the Director, Office of Diversity, Equal Opportunity (ODEO) and Public Contract Assistance, which did not substantiate his allegation that he was subjected to a violation of the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy).

By way of background, S.O., who is Nigerian<sup>1</sup>, alleged that B.R., a Caucasian former Section Chief, C.L., a Caucasian EE3, and P.K., a Caucasian Section Chief, engaged in harassing and discriminatory conduct towards him and others and that he received less compensation than two co-workers who were doing similar work. Specifically, S.O. alleged that B.R. discriminated against him based upon race, color and national origin by not giving him an opportunity to supervise. S.O. indicated that although he was in a primary supervisory title, B.R. never gave him the opportunity to supervise other employees. He provided the ODEO an audio tape where B.R. and P.K. discussed potentially assigning supervisory responsibilities to S.O. and another EE3. The investigation revealed that B.R. expressed concern about assigning S.O. supervisory duties because he was not following her direction to be “more cooperative, collaborative with the regulated community rather than

<sup>1</sup> It is assumed that S.O. is Nigerian based on his appeal where he references non-Nigerians who he contends received more favorable treatment than him.

adversary.” Therefore, the investigation did not find that there was evidence that this decision was based on discriminatory reasons. Additionally, S.O. alleged that B.R. discriminated against him by assigning him an “excessive workload” and being overly critical of his work. The investigation revealed that S.O. acknowledged that B.R. had treated a Caucasian employee in a similar fashion and that there was no evidence that B.R.’s treatment of S.O. was based on his membership in a protected class. Further, S.O. alleged that B.R. retaliated against him for filing a grievance against her in 2014. The investigation revealed that the grievance did not allege any discrimination by B.R. based on S.O.’s membership in a protected class. Therefore, the investigation found that the “retaliation” allegation did not touch the State Policy.

S.O. presented that P.K. referred to him as “sleazy” when speaking with B.R. and alleged that this comment was made for discriminatory reasons. The investigation reviewed the conversation and while the ODEO did not necessarily approve of this language, it found no evidence that this comment was made for discriminatory reasons. S.O. alleged that P.K. discriminated against him when he selected C.L. as Acting Section Chief. The investigation revealed that supervisory experience was required to be selected for the position and S.O. acknowledged that he did not have that experience. Therefore, the investigation found that this action did not violate the State Policy.

S.O. alleged that C.L. referred to former Director I.A. and himself as “morons” and “a\*\*holes.” He indicated that he did not hear the comment directly. Rather, R.S., an EE3, told S.O. that C.L. made these comments. However, the investigation revealed that R.S. did not recall hearing these comments.

S.O. also alleged that P.P., a Caucasian Chemical Safety Engineer, made a disparaging comment related to the age of former Director, P.A. Specifically, S.O. alleged that P.P. said that P.A. would rather die in the office and be carried out in a body bag than retire. The investigation found that this suggested that P.A. was committed to his job and would not voluntarily retire and was not a derogatory comment about his age. Therefore, the investigation determined that this comment did not touch the State Policy. Additionally, S.O. alleged that P.P. made a discriminatory comment about S.O.’s race in 2014. Specifically, S.O. stated that P.P. pointed to an African-American man who was cleaning the office windows and suggested that S.O. could be that man and was lucky to not performing that type of work. S.O. was not able to identify anyone who witnessed the comment. The ODEO found that the comment touched the State Policy and indicated that it would take appropriate corrective action.

S.O. alleged that he was paid less than P.P. and A.D., a Caucasian Chemical Safety Engineer, while doing similar work. The investigation revealed that the Chemical Safety Engineer title was in a higher pay range than the appellant’s title.

Further, S.O. did not allege or provide any evidence that he was not appointed to the Chemical Safety Engineer title due to his membership in a protected class. Therefore, the investigation determined that this allegation did not touch the State Policy.

On appeal, S.O. states that his complaint with ODEO was filed on September 5, 2018, and the determination letter is dated December 5, 2019, well beyond the maximum of 180 days to issue a final determination letter from the initial date of complaint under the State Policy. Concerning B.R.'s comments on the audio tape that she was denying S.O. supervisory duties because he failed to follow her directives, he complains that the investigation should not have accepted her explanation at face value without an investigation as he indicates that B.R. never gave him any directive, verbally or in writing, that he needs to be more cooperative or collaborative with the regulated community. In fact, S.O. presents that in 2016 and 2017, B.R. indicated that S.O. was doing an exceptional job in his performance evaluations and asked if he would be interested in supervising lower-level engineers and even sent him to Supervisor Success Series training. Therefore, he believes that B.R.'s concerns were a pretext for her discriminatory behavior. Further, S.O. believes that B.R.'s denying him supervisory duties was discriminatory as he provided specifically named non-African-American and non-Nigerian employees who were similarly situated as him who were provided supervisory duties within 10 years, while he not provided this opportunity within his 18 years of service.

Additionally, S.O. states that the determination letter did not address that shortly after he successfully completed his supervisory training, P.K. rearranged "management and responsibilities" and excluded him from having supervisory duties. He claims that the determination letter did not address that his denial of supervisory duties for discriminatory reasons denied him the experience that made him a potential candidate to be appointed as Environmental Engineer 4 in 2014 and Acting Section Chief in November 2019. S.O. presents 10 named employees who he could have been assigned to supervise. The appellant states that his complaint against P.K. for calling him "sleazy," was filed under the harassment and hostile workplace sections, and not discrimination.

Concerning the allegation that C.L. called I.A. and himself "morons" and "a\*\*holes," S.O. indicates that this complaint was also filed under the harassment and hostile workplace sections, and not discrimination. S.O. claims that he gave the investigator excerpts from cell phone messages from R.S. who claimed that he heard C.L. make these comments.

S.O. indicates that after he filed his initial complaint, he made additional complaints that were not addressed in the determination letter. He presents that on February 8, 2019, he advised the appointing authority's Chief of Staff and others that he was being denied supervisory experience even though he holds a

supervisory title. On March 1, 2019, he sent a communication to upper-level appointing authority staff complaining about the ODEO's investigation and that P.K. and M.H. continued to discriminate and retaliate against him. On March 15, 2019, he sent an e-mail to the ODEO where he provided evidence that plans were in place to assign him supervisory duties, but B.R. and P.K. changed the plan after I.A. retired. On March 29, 2019, S.O. indicates that he sent verified records showing that his performance in quality and quantity was arguably the best in the bureau. On April 10, 2019, S.O. sent the ODEO an e-mail complaining that P.K. continued to discriminate against him in retaliation for his complaints. He complained that two new employees were hired, and he was not assigned supervisory responsibility. On May 16, 2019, S.O. sent another e-mail to various appointing authority staff complaining about his treatment by P.K. and M.H. and how he has been denied supervisory responsibilities even though he is in a supervisory title. He also complained that having him report to R.S., who holds his same EE3 title, was an attempt to demoralize and subjugate him. On September 26, 2019, he sent an e-mail to the ODEO complaining about the on-going discrimination and that there were six lower-level engineers who he could supervise. On October 29, 2019, S.O. sent the ODEO an e-mail reiterating his on-going complaints. Further, he asserted that his State vehicle was taken away, while other similarly situated employees continued to have them and he was relegated to office duty. On November 13, 2019, S.O. sent the ODEO an e-mail indicating that there were four new Environmental Engineer Trainees and he was not assigned to supervise any of them. On November 21, 2019, he sent an e-mail complaining that because he was not assigned any supervisory duties due to discrimination, he was denied the supervisory experience needed to qualify for the Section Chief position announced on November 20, 2019.

S.O. requests that he be placed in the position that he alleges that he would have been in if he had not been subjected to discrimination. Therefore, he requests to be appointed as an Environmental Engineer 4 or Chemical Safety Engineer with back pay from 2015. Additionally, S.O. requests compensatory damages for his emotional and psychological harm that he has suffered since August 2018 and punitive damages for the malicious and reckless acts of discrimination against him. Further, he requests that the appointing authority undertake remedial actions to correct its violations of the State Policy towards him and the Civil Service Commission (Commission) take corrective action against the ODEO to ensure that it complies with the State Policy procedures in all future actions.

Although given the opportunity, the appointing authority did not respond to the appeal.

## 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, color, and national origin is prohibited.

*N.J.A.C.* 4A:7-3.1(h) states, in pertinent part, that retaliation against any employee who alleges that she or he was the victim of discrimination/harassment, provides information in the course of an investigation into claims of discrimination/harassment in the workplace, or opposes a discriminatory practice, is prohibited by this policy.

*N.J.A.C.* 4A:7-3.1(k) states, in pertinent part, that any employee found to have violated any portion or portions of this policy may be subject to appropriate administrative and/or disciplinary action which may include, but which shall not be limited to: referral for training, referral for counseling, written or verbal reprimand, suspension, reassignment, demotion, or termination of employment.

*N.J.A.C.* 4A:7:3.2(l) states, in pertinent part, that the investigation of a complaint shall be completed and a final determination shall be issued not later than 120 days after the initial intake of the complaint. The time completion of the investigation and issuance of the final letter of determination may be extended by the State agency head for up to 60 additional days in cases involving exceptional circumstances.

*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, S.O. alleged that even though he was in a primary supervisory title, B.R. discriminated against him based upon race, color and national origin by not giving him an opportunity to supervise. The investigation revealed an audio tape where B.R. indicated to P.K. that S.O. should not be assigned supervisory duties because he was not following her direction to be “more cooperative, collaborative with the regulated community rather than adversary.” S.O. claims that B.R.’s rationale is a pretext for her discrimination as he was never provided this direction, either verbally or in writing. However, a review of the appellant’s e-mails that he submits in support of his appeal, such as a November 9, 2018 e-mail, states:

B.R. solicited complaints against me from discontented regulated facilities; this (character assassination) was B.R.’s original plan to get rid of me starting in 2014, before I cried to Human Resources. Apparently, she handed her solicited complaints to Acting Chief, P.K., and they are now with Director M.H. M.H. gave me a copy of one of

the complaints on October 30, 2018. The complaint was dated 2017, and apparently addressed to I.A., B.R., and P.K. It has B.R.'s handwriting all over it. **However, it is noteworthy that I.A., B.R., and P.K. never mentioned the complaint or any other complaint to me at any time.** That is because former Bureau Chief, I.A., saw the big picture, and knew that I was simply doing my job in accordance with the bureau's written procedures.

It is noted that the S.O. has provided no confirming witness or other confirming evidence that B.R. solicited complaints to assassinate S.O.'s character, which is a serious accusation. It is further noted that S.O.'s accusation in the e-mail that states that B.R. had been planning to get rid of him starting in 2014 would seem to contradict his statements on appeal where he states that B.R. indicated his performance was exceptional in 2016 and 2017 and arranged for him to have supervisory training as those actions would not appear to be the actions of someone planning to get rid of him. Additionally, the appellant presents several non-African-American and non-Nigerian employees who he claims were in similar positions as him who were provided supervisory duties, while he was not given that opportunity. While this could potentially be the basis for a discrimination complaint, even if S.O.'s statement is true, it does not automatically demonstrate that B.R.'s actions were based on discriminatory reasons. Instead, the evidence in this matter indicates that even if S.O.'s superiors chose not to share these complaints with S.O., B.R. and P.K. had legitimate concerns about his ability to be a supervisor. Even if S.O. believes that the complaints were unfair, there is no evidence that B.R. and P.K. denied S.O. the ability to supervise based on his membership in a protected class.

Additionally, S.O. alleged that B.R. discriminated against him by assigning him an "excessive workload" and being overly critical of his work. However, the investigation revealed that S.O. acknowledged that B.R. had treated a Caucasian employee in a similar fashion. Therefore, while S.O. might have disagreed with B.R.'s management style, disagreements between co-workers cannot sustain 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).

Further, S.O. alleged that B.R. retaliated against him for filing a grievance against her in 2014. However, the investigation revealed that the grievance did not allege any discrimination by B.R. based on S.O.'s membership in a protected class. Therefore, this alleged "retaliation," could not be retaliation that touches the State Policy under *N.J.A.C. 4A:7-3.1(h)*, and cannot be addressed in this matter.

In reference to S.O.'s allegation that P.K. referred to him as "sleazy," that term is not a *per se* violation of the State Policy and must be analyzed in the context

of the situation. However, there is no evidence that that term, if it was used in reference to S.O. was made based on his membership in a protected class. Additionally, S.O. alleged that C.L. referred to former Director I.A. and himself as “morons” and “a\*\*holes.” Similarly, while the use of these terms may be inappropriate, these terms are not *per se* violations of the State Policy. Moreover, although S.O. claims that R.S. sent him text messages that are on his cell phone that demonstrate that R.S. accused C.L. of making these statements, the investigation did not indicate this, R.S. denied recalling that he made this accusation, and S.O. has not provided these excerpts on appeal. Therefore, there is no confirming evidence that C.L. made the alleged statements. Regardless, even if provided, there is no evidence that such comments were made based on S.O.’s membership in a protected class. Additionally, the investigation found that P.P.’s comments concerning former Director, P.A.’s age were not derogatory as they suggested that he was dedicated to his job and there was no confirming evidence that P.P. made the alleged comments in 2014 concerning S.O.’s race.

Concerning S.O.’s e-mails that he sent after he filed his initial complaint, these e-mails were mainly him expressing the original allegations or his statements providing further examples of alleged continued discrimination. With respect to his claim that he has performed assignments at a greater quantity and quality than others who were appointed as supervisors, even if true, does not establish his claims that he was denied supervisory opportunities based on his race, color or national origin. As indicated above, B.R. recommended that S.O. not be a supervisory based on his interactions with the regulated community and not based on any claim related to the quantity and quality of his assignments. Further, while S.O.’s complaints about reporting to R.S., having his State vehicle taken away, and only being provided office assignments were not addressed in the determination letter, S.O. has not provided any evidence that such actions were based on discriminatory reasons and such actions would appear to be consistent with B.R.’s concerns about S.O.’s adversarial interactions with the regulated facilities.

With respect to S.O.’s requested remedies, as the Commission finds that there are no violations of the State Policy, most such requested remedies are moot. Regardless, in reference to his request for compensatory and punitive damages, even if the Commission had found a violation of the State Policy, the State Policy is corrective in nature and the remedies involve administrative and disciplinary actions taken against those who have been found to violate the State Policy. As such, the Commission does not have jurisdiction to award compensatory and punitive damages for violations of the State Policy. *See N.J.A.C. 4A:7-3.1(k)*. Regarding his request that the appointing authority undertake remedial action to correct its violations of the State Policy against him, as the Commission does not find that the S.O. has been subject to any such violations, this request is moot.

Regarding the timeliness of the complaint, S.O.'s complaint was filed with the ODEO in September 2018. However, the determination letter was not completed until December 2019, which is clearly in violation of the 180 days maximum time to complete an investigation and to issue a final determination under *N.J.A.C. 4A:7:3.2(l)*. The ODEO has not offered any explanation for this delay. Regardless, even if it had, the time frame is not optional. *See In the Matter of S.J.* (CSC, decided April 9, 2014). Therefore, the Commission warns the appointing authority that it should complete its investigations and issue final determinations within the 180-day time frame as prescribed in the State Policy as, under certain circumstances, the Commission could find that a delay compromises the thoroughness of an investigation and lead to fines for non-compliance. *See N.J.A.C. 4A:10-2.1(a)2.*<sup>2</sup>

One last matter must be addressed, the EE3 title is assigned to the "R" employee relations group. As such, it is designated as a primary level supervisory title. As such, individuals in such titles **must supervise subordinate employees**. Thus, the appointing authority is directed to immediately assign the appellant appropriate supervisory duties. Deficiencies that the appellant may have in that regard, if any, can necessarily be addressed via appropriate training or through the disciplinary process.

### 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 APRIL , 2020




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Deirdré L. Webster Cobb  
Chairperson  
Civil Service Commission

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<sup>2</sup> It is noted that the remedy for such non-compliance is **not** an award of damages to the appellant.



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