



STATE OF NEW JERSEY

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

In the Matters of K.P., Motor Vehicle
Commission

CSC Docket No. 2020-2023

Discrimination Appeal

ISSUED: MAY 22, 2020 (SLK)

K.P., a Technician MVC¹ with the Motor Vehicle Commission, appeals the decision of the Equal Employment Opportunity Office (EEO), which did not substantiate her allegation that she was subjected to a violation of the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy).

By way of background, K.P., an African-American, alleged that she was subjected to discrimination based on race and/or disability and retaliation. Specifically, K.P. alleged that B.B., a Caucasian Supervisor 2, MVC, does not like her talking to anyone in the Agency, employees have access and have been reading B.B.'s e-mails concerning her, B.B. accused her of using customers' private information and avoiding some customers' documents, B.B. permits other employees to come in late and take longer lunch breaks, K.P. asked B.B. to move to a vacant cubicle due to a medical condition and, instead, B.B. reassigned the requested cubicle to an employee who B.B. has children with², B.B. turned up the thermostat to discriminate against her, B.B. and S.D., a Caucasian Supervisor 1, MVC, falsely claimed that she was not performing well and not following appointing authority policies and procedures and

¹ The determination letter indicates that K.P. was a Safety Specialist 1 in Salem County. Thereafter, she was reassigned to Mays Landing and then reassigned to West Deptford and made a Records Technician 3, MVC due to a medical accommodation because she could no longer perform the essential duties of a Safety Specialist. Subsequently, she failed her Working Test Period as a Records Technician 3, MVC and was demoted to Technician MVC.

² The determination notes that this employee was removed from under B.B.'s supervision.

retaliated by initiating disciplinary action to demote her, and B.B. denied her request for additional training and refused to let her go to training. Additionally, K.P. claimed that B.B. and S.D. retaliated against her for having filed several discrimination complaints against her supervisor and other employees.

The investigation revealed that K.P. denied ever hearing B.B. saying anything racially discriminatory towards her. Additionally, K.P. was unable to provide details of any circumstances where B.B. or S.D. took any action or made any comment about her race or provide any specific circumstances where B.B. or S.D. took any action or made any comment about her disability. Further, the Leave Management Unit was responsible for receiving and dealing with any accommodations request. Moreover, K.P. was not able to identify any witnesses or produce any documentation to support her claims and there was no credible evidence to support her claims. Therefore, the investigation was unable to substantiate her allegation of race and/or disability discrimination. Concerning the retaliation claim, based on interviews and documentation obtained during the investigation, the investigation was unable to substantiate K.P.'s claim as there was sufficient evidence to conclude that she was demoted for failing her Working Test Period due to continued mistakes.

On appeal, K.P. asserts that her prior complaints with the Equal Employment Opportunity Commission (EEOC) and her prior Civil Service Commission (Commission) decision involve separate matters and each case should be handled separately. K.P. complains that the EEO's determination in this matter is vague, not in chronological order and confusing to the reader. She characterizes the determination letter as being more personal than professional and does not address the issue that she is an employee with a workplace injury. K.P. requests that the EEO rewrite its determination to specifically document for each case. Concerning a resolution, she requests that she be appointed as a Safety Specialist 2 in Salem County as she states that this would have been her title if she had not been hurt on the job and that Salem County is the location that meets her accommodation request due to her medical condition. She requests that the appointing authority stop discriminating and retaliating against her. K.P. requests back pay, including step increments, clothing allowances and seniority that she would have received if there was never any break from her employment as a Safety Specialist. She requests a removal of a false claim of discrimination against her that served as retaliation against her to promote the employee who caused her to get hurt on the job. K.P. requests a copy of all Commission and appointing authority arguments, submissions, evidence on the record and witness information.

In response, the EEO provides a November 2, 2018 determination letter from a prior State Policy complaint, documents regarding a January 24, 2019 accommodation request related to air flow, documents related to a February 7, 2019 ergonomic evaluation of K.P.s chair, a March 18, 2019 e-mail chain with a Leave Management Unit Manager, two grievances that are dated May 7, 2019, a June 13,

2019 letter and e-mails regarding K.P.'s accommodation request, a July 3, 2019 grievance with a statement and follow-up, an August 22, 2019 fax to an administrative law judge, a September 25, 2019 request for leave paperwork due to stress, an October 10, 2019 follow-up letter regarding an August 15, 2019 meeting and transfer request, a November 26, 2019 notice of *pro se* appearance by K.P., a December 3, 2019 Initial Decision dismissing K.P.'s appeal from the Office of Administrative Law and a January 15, 2019 Final Administrative Action from the Commission dismissing her Working Test Period 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 and disability 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. No employee bringing a complaint, providing information for an investigation, or testifying in any proceeding under this policy shall be subjected to adverse employment consequences based upon such involvement or be the subject of other retaliation. Under *N.J.A.C.* 4A:7-3.1(h)4, an example of prohibited retaliation includes imposing or threatening to impose disciplinary action on an employee for reasons other than legitimate business reasons

N.J.A.C. 4A:7-3.1(g)1 and 4A:7-3.2(l) provide, in pertinent part, that all investigations of discrimination/harassment claims shall be conducted in a way that respects, to the extent possible, the privacy of all the persons involved.

N.J.A.C. 4A:7.3-2(i) provides, in pertinent part, that at the EEO/AA Officer's discretion, a prompt, thorough, and impartial investigation into the alleged harassment or discrimination will take place.

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 the determination letter indicates that K.P. was a Safety Specialist 1 and then was reassigned to the position of Records Technician 3, MVC due to a medical accommodation because she could no longer perform the essential duties of a Safety Specialist. On appeal, K.P. did not dispute this. However, she requests that she be appointed as a Safety Specialist 2 in Salem County as she states that this would have been her title if she had not been hurt on the job. She also complains that the determination letter does not address the issue that she is an

employee with a workplace injury. However, if K.P. was reassigned to the title of Records Technician 3, MVC because she could no longer perform the essential duties of a Safety Specialist due to a workplace injury and, she is stating that she is still an injured employee, it is unclear how K.P. could be appointed as a Safety Specialist 2.

Regardless, the investigation revealed that K.P. never heard B.B. or S.D. make any derogatory comments about her race or disability. Further, K.P. was unable to provide the investigation any witnesses, documentation or other evidence that any action taken by them was due to race or disability. Additionally, any actions or non-action concerning her accommodation requests were taken by the Leave Management Unit and not the respondents. With regard to K.P.'s claim that she was retaliated against for filing State Policy complaints against supervisors and co-workers by being demoted from the title of Records Technician 3 to Technician MVC, the investigation revealed she failed her Working Test Period due to continued mistakes. Moreover, on appeal, K.P. has not produced any witnesses, documentation or other evidence who confirmed her allegations. Also, she has not made any specific references to potential witnesses who were not interviewed, any documents that were not reviewed or any other evidence that was not reviewed that could potentially corroborate her allegations. Mere allegations, without evidence, are insufficient to substantiate a violation of the State Policy. *See In the Matter of T.J.* (CSC, decided December 7, 2016).

In reference to K.P.'s request for documentation, due to privacy concerns as articulated in *N.J.A.C. 4A:7-3.1(g)1* and *4A:7-3.2(l)*, she is not automatically entitled to all documentation that the EEO used in making its determination. A review of the record indicates that K.P. did not offer any evidence either during the investigation or on appeal that could corroborate or potentially corroborate her allegations. As such, the Commission is satisfied that she has had a full opportunity to present evidence and arguments on her behalf and she is not entitled to the EEO's investigation report or other requested documentation. Further, the Commission has a complete record before it upon which to render a fair decision on the merits of the appellant's complaint. *See in the Matter of Juliann LoStocco, Department of Law and Public Safety*, Docket No. A-0702-03T5 (App. Div. October 17, 2005); *In the Matter of Salvatore Maggio* (MSB, decided March 24, 2004). Accordingly, the Commission finds that the appointing authority's investigation was a prompt, thorough, and impartial and K.P. has failed to meet 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
20TH DAY OF MAY, 2020

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