



**STATE OF NEW JERSEY**

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

In the Matter of C.M., Department of  
Human Services

CSC Docket No. 2020-1707

Discrimination Appeal

**ISSUED: JULY 2, 2020**

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C.M., a former Senior Police Officer, Human Services,<sup>1</sup> with the Department of Human Services (DHS), appeals the determination of the Deputy Commissioner, DHS, which found which found that the appellant did not present sufficient evidence to support a finding that he had been subjected to a violation of the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy).

By way of background, the appellant filed a complaint with alleging discrimination based on age, gender, and retaliation. Specifically, the appellant claimed that upon his return from medical leave, he was returned to a “uniform” assignment rather than his former “detective” assignment. The DOH’s Office of Equal Employment Opportunity (EEO) investigated the complaint and found a detective assignment is not a Civil Service title or rank and that it is the prerogative of the Human Service Police (HSP) to assign personnel as it sees fit to advance public safety. It also found that there was no negative employment consequence as a result of moving from detective to uniform personnel as the appellant did not lose compensation and the detective position entails on call status at all times. Additionally, the EEO determined that the HSP claimed a reasonable, non-discriminatory reason for its action in that a shortage of uniformed personnel and a sufficient number of detectives in the Northern Region made it more reasonable to assign him in uniform than as a detective. It also found that no disparate treatment in relation to a circumstance with I.R., that occurred more than four years prior. The investigation further determined that the entire HSP senior staff formed a consensus

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<sup>1</sup> The appellant retired from State service effective August 1, 2019.

that there was more of a need for uniform personnel than for a detective and that the appellant should be returned to uniform duty. Finally, the EEO found that HSP reassigned at least two other detectives, a male and a female, both 49 years of age, to uniformed duty. Therefore, the investigation was unable to substantiate the appellant's allegations.

On appeal, the appellant states that despite the EEO's determination that "detective" is not a Civil Service title and that the appointing authority has the prerogative to assign personnel as it sees fit, he underscores that he was selected for the "detective" position in March 2008. At that time, he states he was under the premise that "detective" was a position, not an assignment, and that he was given a detective identification badge. The appellant also states that it is a direct violation of the Workers' Compensation law to discriminate against an employee who claims workers' compensation benefits.<sup>2</sup> Additionally, he claims that he has suffered a negative consequence as a result of being assigned to a uniform position. In this regard, he states that he lost his assigned station at the Hunterdon Developmental Center, which was 20 minutes away from his residence, and is now assigned to Greystone Psychiatric Hospital, which is more than one and a half hours from his residence. The appellant states that he lost his regular days off, and was never afforded the opportunity to bid on positions upon his reassignment, as was done for younger offers. He also states that he lost his take home vehicle and "on-call" status, which resulted in a monetary loss. With respect to the asserted reasonable non-discriminatory reason proffered by the EEO, the appellant contends that there are now less uniformed personnel assigned to the Northern region than when he was reassigned from the detective designation. Further, he maintains that another officer who was assigned back to a detective designation after an extended medical leave of absence is similar, but that person was less than 40 years of age. The appellant also states that the EEO failed to mention what precluded the removal of detective duties of the two other detectives that were reassigned to uniform duty and that he was in fact retaliated against for filing an EEO complaint. In this regard, he notes that his leave of absence associated with his workplace injury was deducted from his anniversary accrual time in violation of *N.J.A.C.* 4A:3-4.6(b)6. In a supplemental submission, the appellant provides additional arguments of asserted retaliation in that he brought forth to his commander and immediate supervisor his belief that the appointing authority violated his civil rights due to age discrimination.

In response, the EEO presents that it interviewed E.F. for details regarding the decision to assign the appellant to uniform patrol instead of to detective. It also interviewed T.G., the Director, who stated that the position of detective is an assignment, not a rank, and that those assigned a detective accrue no benefits over uniform personnel. T.G. also indicated that the entire command staff formed a consensus that the appellant should return to a uniform assignment. In this regard, E.F., T.G., J.L., D.B. and B.L. agreed at that time, operational needs dictated that

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<sup>2</sup> The appellant returned to work after receiving Workers' Compensation benefits.

the appellant be returned to uniform duty. In this regard, there was already one detective for each of the three regions. Additionally, the Northern region working out of the Greystone Station was seriously short of uniformed personnel. Since the appellant lived in Alpha, which is in the Northern region, the command staff determined that the appellant would work in the Northern region. Additionally, E.F. denied that any decision was made based on the appellant's age. With respect to the appellant's assertion that an additional officer was assigned to detective duty after he was scheduled to return from his leave of absence, the EEO states that E.F. explained that officer was specifically qualified to operate a newly acquired drone. The drone operation was to take place at Ancora Station, far from where the appellant would be assigned, and that the drone operator would receive a detective designation since he would not be on regular patrol. It also states that the assignment of I.R. back to a detective position did not relate to the current situation and that at least two other detectives have be reassigned to uniform duty. Moreover, since the appellant admitted that he did not participate in a prior discrimination complaint or investigation, the EEO properly found that he did not meet the requirements for discriminatory retaliation.

## CONCLUSION

*N.J.A.C.* 4A:7-3.1(a) provides that under the State Policy, discrimination or harassment based upon the following protected categories are prohibited and will not be tolerated: 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.

*N.J.A.C.* 4A:7-3.1(b) states that it is a violation of the State Policy to use derogatory or demeaning references regarding a person's race, gender, age, religion, disability, affectual or sexual orientation, ethnic background, or any other protected category set for in (a) above. A violation of this policy can occur even if there was no intent on the part of an individual to harass or demean another. Additionally, the appellant shall have the burden of proof in all discrimination appeals. *See N.J.A.C.* 4A:7-3.2(m)(3).

The Civil Service Commission (Commission) has conducted a review of the record and finds that the appellant has not met his burden of proof. The investigation interviewed witnesses and documentation and determined he was not discriminated against based on his age or was retaliated against for involvement in a prior discrimination complaint. The Commission disagrees with the appellant's arguments regarding his belief that a detective designation is a position as it is not a title in the State Classification Plan or that he suffered any loss in benefits entitled

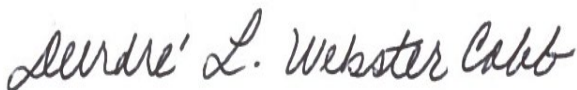
to a Senior Police Officer, Human Services as a result of his reassignment. While the appointing authority has determined that such things as a take home car and being on-call are necessary for a detective assignment, the investigation found that there was a reasonable, non-discriminatory reason, *i.e.*, the shortage of uniformed personnel and a sufficient number of detectives in the Northern region, for assigning him to a uniform position. Although the appellant disagrees, citing the case of an individual who was assigned to a detective designation after a medical leave of absence, the fact that an individual was assigned detective duties four years earlier does not establish that the appellant should have been assigned detective duties upon his return from workers' compensation leave. Other than both cases involved individuals who returned from a leave, the appellant provides no evidence regarding the circumstances of the case involving I.R. Presumably, at that time, the determination was made that a detective designation for the position was necessary. In this case, the record establishes that there was not a need for an additional detective when the appellant returned to work. Moreover, the subsequent individual that was designated as a detective had specialized training in the operation of a drone that would be stationed in another region. The appellant has not refuted this fact. Therefore, since that individual would not be on regular patrol, it was determined that a detective designation was proper. Finally, as the appellant had not participated in a prior discrimination complaint, the EEO properly found that he was not retaliated against for filing a complaint under the State Policy.

### 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 1<sup>ST</sup> DAY OF JULY, 2020



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