



STATE OF NEW JERSEY

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

In the Matter of R.I.,
Department of the Treasury

CSC Docket No. 2018-2781

Discrimination Appeal

ISSUED: JULY 2, 2020

R.I., an Auditor 3, Taxation¹ with the Department of the Treasury (Treasury), requests enforcement of the March 2, 2018 determination of the Director, Division of Administration, stating that sufficient evidence was found to support a finding that the appellant was subjected to a violation of the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy).

The appellant, an African American and who is currently 62 years old, filed a complaint,² alleging discrimination based on race, age, and disability. In response, the appointing authority conducted an investigation which included reviewing documentation and interviewing the appellant. The appellant specifically alleged that D.S., an acting Taxation Division Director,³ discriminated against him based on race because he had said to the appellant that “I don’t have time for that” when he supposedly refused to read documents that the appellant gave him. In response, the appointing authority determined that D.S.’s action “was appropriate” since managers

¹ Auditor 3, Taxation, was renamed Auditor 1, Taxation, effective September 28, 2018. As the events alleged in this matter occurred prior to the renumbering of the title series, the former numerical designations will be used in this appeal. Thus, the appellant is actually serving in the Auditor 1, Taxation title.

² The appellant had initially filed a complaint with the Equal Employment Opportunity Commission (EEOC). The appointing authority conducted an administrative investigation in accordance with the State Policy. The within appeal was held in abeyance pending resolution of the related EEOC matter. The appointing authority then advised that the EEOC matter had been dismissed and no further action would be taken. However, the appeal was further held due to a lack of quorum to decide the case. As there is now a quorum, the appeal has been presented to the Civil Service Commission (Commission) for a final determination.

³ D.S. serves in the senior executive service.

and supervisors were prohibited from requesting or accepting medical documentation from employees. Regarding the allegation based on age, the appellant claimed that D.S. “stuck [him] in an Auditor 3 [position] to maybe make room for those younger” and “where [the appellant was moved from they brought someone in that was younger . . . half [the appellant’s] age.” In response, the appointing authority indicated that the appellant did not identify this employee’s name or gender or the date the employee was assigned to the unit. Thus, it concluded that, without this information, a violation of the State Policy could not be substantiated.

As to the appellant’s claim of disability discrimination, the investigation found that after the appellant was reassigned to the “Office Audit C-Audit Activity Group,” he received an unsatisfactory rating in his Performance Assessment Review (PAR) and ultimately failed. During this time, the appellant had suffered from a medical condition. However, the appellant did not disclose his medical condition until after receiving the unsatisfactory rating. This resulted in meetings with management and the Statewide ADA⁴ Coordinator to discuss what reasonable accommodation could be provided. The appellant was offered a demotion to the title of Auditor 3, Taxation, from Auditor 2, Taxation, but with no loss in salary. The appellant accepted the demotion. He was then reassigned to the “Reinstatement Unit, Corporate Services B Team” (Reinstatement Unit) a unit in which he previously worked. The investigation further found that “the job responsibilities, duties, and expectations that [the appellant] performed previously in the Reinstatement Unit in the Auditor 2, Taxation title, [were] the same responsibilities, duties, and expectations that [the appellant] would perform for the Reinstatement Unit after returning to the unit in the lower title of Auditor 3, Taxation. Based on these facts, the Division of Taxation’s rationale in seeking a voluntary demotion from [the appellant] as a means of accommodating [his] medical condition seem[ed] unreasonable.” The appointing authority indicated that there was no discussion as to a lateral move to this unit as an Auditor 2, Taxation. Therefore, the appointing authority concluded that there was a violation of the State Policy based on disability and indicated that “appropriate administrative action will be taken.” The appointing authority also advised the appellant that he could pursue a request for job classification review by the Commission.

It is noted that agency records indicate that the appellant took a voluntary demotion from Auditor 2, Taxation, to Auditor 3, Taxation effective December 11, 2014 and that the appointing authority requested that his salary as an Auditor 2, Taxation be “red-circled.” In support of its request to “red-circle” and record the appellant’s voluntary demotion, it was necessary for the appointing authority to submit to this agency for review and approval a copy of the appellant’s resume, table of organization, and a completed State Position Classification Questionnaire (PCQ). On January 7, 2015, the appellant signed the PCQ certifying to the best of his knowledge that it was accurate and complete. He also stated on the PCQ that he “reserve[d] the right to appeal his demotion to Auditor 3.” This agency reviewed the

⁴ Americans with Disability Act

submitted documentation and approved the red-circling of the appellant's salary and his voluntary demotion on January 30, 2015. It is further noted that the appellant filed his complaint with the EEOC almost three years later, on November 3, 2017, which was received by the appointing authority's EEO/Affirmative Action (AA) on November 17, 2017. The EEO/AA determination that he performed the same duties as an Auditor 3, Taxation as he did when he was an Auditor 2, Taxation is dated March 2, 2018. The appellant has remained in the lower title, which, as set forth above, had been renamed to Auditor 1, Taxation effective September 29, 2018, and has not filed a request for job classification review.

In his request for enforcement, the appellant explains his medical condition, which resulted in management referring him to the Employee Advisory Service. He also outlines the events surrounding the circumstances of his case and describes the duties that he performs. Additionally, the appellant states that he continued treatment with his primary doctor who recommended the appellant undergo cognitive/psychological therapy and follow-up neurological evaluations. The appellant claims that D.S. made the demotion a condition for granting him an accommodation which he contends was a "discrete discriminatory act" and "punishment in [the] form of [a] demotion was given to [him] in place of workplace accommodation for medical reasons." After he completed the recommended therapy, the appellant asserts that he requested to be returned to the Auditor 2, Taxation, title, but management refused and informed him that he accepted "a permanent reassignment to the Reinstatement Unit to Auditor 3." The appellant objected to management's position and filed a discrimination complaint. The appellant requests that he be restored to an Auditor 2, Taxation, position and have the opportunity to take the Auditor 1, Taxation, examination which was administered in February 2018.⁵ He maintains that management agreed to reinstate him to the Auditor 2, Taxation, title "since 3/30/2018" but "nothing has been done to restore [his] title also to make [him] whole." In that regard, the appellant submits an email, dated May 30, 2018, purportedly from an EEOC Investigator, which indicates that "[t]he [S]tate has agreed to keep you at the job title you requested. If that is all please let me know and we can close your case out." The appellant responded to this email asking that he be able to take the 2018 promotional examination, or alternatively, that he be appointed to the Auditor 1, Taxation title provisionally pending promotional examination procedures. The appellant reiterates this remedy in his appeal.

It is noted that the appointing authority was provided with an opportunity to respond to this appeal. However, it advises that, since the EEOC charge has been dismissed, it will take no further action in this matter.

⁵ The appellant is referring to the Auditor 1, Taxation (PS5430U), Department of the Treasury examination, which had a closing date of July 21, 2017 and was administered on February 8, 2018. The examination was open to employees who possessed one year of continuous permanent service in certain titles, including Auditor 2, Taxation, and educational requirements. The resultant eligible list promulgated on March 1, 2018 and expires on February 28, 2021.

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. This policy pertains to all employment practices such as recruitment, selection, hiring, training, promotion, advancement appointment, transfer, assignment, layoff, return from layoff, termination, demotion, discipline, compensation, fringe benefits, working conditions, and career development. *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, 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*.

Initially, the appellant does not dispute the appointing authority's findings that he was not subjected to State Policy violations with regard to race or age. Rather, he seeks to be made "whole" pursuant to the finding that a State Policy violation had been found based on disability discrimination. However, the determination that he was discriminated against based on disability was essentially premised on a classification determination made by Treasury's Director of Administration during its State Policy investigation almost three years after this agency determined that after the voluntary demotion, the appellant's position was properly classified as Auditor 3, Taxation. It must be emphasized that the Commission, *not* any State or local appointing authority, has the exclusive authority to determine the proper classification of positions for employees under the jurisdiction of Title 11A. *See N.J.S.A. 11A:3-1(a)* and *N.J.A.C. 4A:3-3.3(d)*. In this regard, this agency has promulgated extensive regulatory criteria governing the processes it must perform during a position reclassification study or for position review requests and appeals. For example, *N.J.A.C. 4A:3-5* states that when the duties and responsibilities of a position change to the extent that they are no longer similar to the duties and responsibilities set forth in the specification and the title is no longer appropriate, the *Chairperson or designee shall after review*, reclassify the position to a more appropriate title if there is one; establish a new title to which the position shall be reclassified, or take other appropriate action based on the organizational structure of the appointing authority. The information needed by this agency to perform a position classification review include a completed PCQ, the incumbents most recent PAR, organizational chart, and a recommendation regarding approval or rejection by the appointing authority. After this agency reviews this submitted documentation, it may determine that a desk audit or telephone interview with the incumbents and her/his supervisor is needed before a proper determination of the position's classification can be made.

According to the March 2, 2018 State Policy determination, the Director of Administration only reviewed the appellant's performance evaluation when it determined that the duties were the same as he previously performed as an Auditor 2, Taxation. A simple comparison of PARs does not necessarily establish the classification of a position. This is because PARs do not take into consideration the varying levels of complexities of duties assigned to a particular position. Thus, the position reclassification review process mandated by this agency requires the position incumbent to specify in detail the duties performed on the PCQ in order to assist this agency in making a determination a position's proper classification. This agency's initial review of the incumbent's PAR, completed PCQ, organizational chart, and recommendation of the appointing authority may not necessarily be determinative of the position's proper classification, so further study of the position may be required via telephone or desk audit. Conversely, when the appellant accepted a voluntary demotion in December 2014, this agency reviewed a then current PCQ provided by the appellant, his PAR, an organizational chart, recommendations by the appointing authority to red-circle his salary, and determined that his position was properly classified as Auditor 3, Taxation. As such, this agency approved the recording of the voluntary demotion. Although the appellant indicated on the PCQ he filed in support of that action in January 2015 that he was certifying to the best of his knowledge that it was accurate and complete and that he reserved the right to appeal his demotion to Auditor 3, Taxation, he never filed a classification appeal with this agency. Rather, the appellant filed a State Policy complaint almost three years later where a violation was sustained based on a position classification determination. However, the appointing authority's Director of Administration is not authorized to make final position classification determinations, and, in this case, clearly did not consider all of the information required to make a proper position classification determination.

In this case, as the Commission determined that the appellant's position was properly classified as Auditor 3, Taxation when he accepted a voluntary demotion to that title effective December 11, 2014. Although the appellant indicated on the PCQ he signed at that time agreeing to the accuracy of his duties that he reserved the right to appeal the voluntary demotion, there is no record of him filing a subsequent classification review with this agency. Additionally, the appellant has not indicated that his duties have changed since he accepted the voluntary demotion. Therefore, since this agency determined his position was properly classified as Auditor 3, Taxation and there is no evidence that a proper classification study was performed by this agency between November 2017 and March 2018, the Commission cannot conclude that the voluntary demotion was in error or that the appellant's position should have always been classified as Auditor 2, Taxation. Regarding the appellant's other requests, there is no basis to appoint him provisionally to the Auditor 1, Taxation (now Auditor 3, Taxation) title as there is no indication that his position should have always remained classified as Auditor 2, Taxation. Further, as this agency properly classified his position as Auditor 3, Taxation effective December 11, 2014, and he never filed a classification appeal with this agency, he would not have been eligible to compete for the promotional examination for Auditor 1, Taxation

(PS5430U), Department of the Treasury, which had a closing date of July 21, 2017. As such, the Commission cannot grant the appellant's request for enforcement.

If the appellant believes his position is misclassified, he should pursue a position classification review in accordance with *N.J.A.C.* 4A:3-3.9.

ORDER

Therefore, it is ordered that this request 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 1ST DAY OF JULY, 2020

Daniel W. O'Mullan

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