



STATE OF NEW JERSEY

In the Matter of A.D.,
Department of Human Services

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

CSC Docket No. 2021-596

Discrimination Appeal

ISSUED: NOVEMBER 1, 2021 (JET)

A.D., a Charge Nurse, 12 Months with New Lisbon Developmental Center, Department of Human Services, appeals the determination of the Office of Equal Employment Opportunity (EEO), Department of Human Services, which found that the appellant failed 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).

On August 22, 2020, the appellant, an African American female, filed an EEO complaint, alleging that S.C., a Director of Nursing Services 1, Developmental Disabilities, R.B., a Director of Nursing Services 1, Developmental Disabilities, J.J., a Supervisor of Nursing Services and an African American female, and R.T., a Supervisor of Nursing Services and an African American female, subjected her to discrimination on the basis of race. Specifically, the appellant alleged that her assignments included distributing medication, and the assignment was based on her race. The appellant alleged that V.S., a Charge Nurse, 12 Months and a Caucasian female, was not assigned such duties. The appellant also alleged that V.S. was provided with a hiring preference, and the appellant was not afforded the same employment opportunities. Specifically, the appellant alleged that she was appointed after V.S. was appointed as a Charge Nurse, 12 Months.¹ The appellant also asserted

¹ It is noted that the Charge Nurse, 12 months position is a non-competitive title. As such, candidates for that title are not required to take a Civil Service examination in order to be appointed to the title. Rather, candidates are appointed to that title through the non-competitive process. Personnel records reflect that the appellant was appointed as a Charge Nurse, 12 Months, effective February 17, 2018.

that she was assigned to work the night shift while V.S. was assigned to work the day shift.

The EEO conducted an investigation, and in its October 27, 2020 letter, it determined that a violation of the State Policy was not substantiated. Specifically, the investigation revealed that the appellant did not apply for the same Charge Nurse, 12 Months position to which V.S. had applied, and V.S. was the only applicant for that position, to which she was appointed effective April 11, 2020.² The investigation also found that the appointing authority initially appointed V.S. on a part-time basis as she possessed previous Charge Nurse experience. The investigation revealed that the appellant applied for a separate Charge Nurse, 12 months position, and was appointed to that position, effective February 17, 2018. Additionally, the EEO interviewed R.B., S.C., R.T., and J.J., and they denied allegations against them. Accordingly, the EEO determined that, since the appellant was appointed as a Charge Nurse, 12 months, and the witnesses denied the allegations against them, there was no violation of the State Policy.

On appeal, the appellant asserts that the October 27, 2020 EEO determination erroneously concluded that J.J. and R.T. did not subject her to discrimination. The appellant maintains that, although J.J. and R.T. are African American, they subjected her to discrimination. The appellant explains that such information constitutes a biased assumption on the EEO's part, as it is possible for an African American to subject another African American to discrimination.³ The appellant states that, since J.J. and R.T. consistently assign duties that are less favorable to her, such action constitutes discrimination. The appellant maintains that the nursing staffing sheets show that J.J. and R.T. assign her to disperse medication on a recurring basis.⁴ Moreover, the appellant argues that she was assigned to a cottage during the COVID-19 pandemic, and she was not provided with the opportunity to work away from individuals who tested positive for COVID-19.⁵

² Official personnel records reflect that V.S. initially served as a Charge Nurse, 12 Months from June 27, 2015 to March 17, 2018, was subsequently appointed to a Medical CWA position, which is not a Civil Service title, from March 17, 2018 to April 11, 2020, and was appointed as a Charge Nurse, 12 Months effective April 11, 2020.

³ The appellant states that such information, that a person of the same race and color can discriminate against another person of the same race and color, has been confirmed by the federal Equal Employment Opportunity Commission.

⁴ The appellant states that for eight years of her employment as a Staff Nurse, and one year of employment as a Charge Nurse, 12 Months, she was utilized as a Float Nurse to dispense medications. The appellant states that she is rarely assigned to work in the Clinic, and V.S. is assigned to the Clinic on a regular basis, which has a lighter work load.

⁵ The appellant states that V.S. was not assigned to work with COVID-19 patients.

In addition, the appellant submits nursing staffing sheets in support of her claims in this matter.⁶ Additionally, the appellant asserts that, at the time of her appointment, V.S. was authorized off duty every other weekend and assigned to the day shift based on her race. The appellant maintains that in March 2020, V.S. was ineligible for appointment as a pool nurse, and the appointing authority's records show that she was not employed as a pool nurse as of February 12, 2020.⁷ The appellant states that, between January 2020 and February 2020, R.B., S.C., R.T., and J.J. were aware that V.S. did not work as a pool nurse. The appellant explains that the policy pertaining to pool nurses provides that such employees must be scheduled at least four shifts per month, and two of those shifts must be served on weekends. The appellant adds that applicants for Charge Nurse, 12 Months position were required to have prior experience as a pool nurse.⁸

Additionally, the appellant asserts that she was hired in 2011 as a part-time Staff Nurse, and she was required to work during the day shift for seven years while serving in that position.⁹ The appellant adds that she was subsequently appointed as a Charge Nurse, 12 Months and was provided with the opportunity to work during the day shift at the time of that promotion.¹⁰ The appellant also maintains that R.B. provided her with excuses as to why she could not be promoted as a Charge Nurse, and the appellant cannot fathom any other reason why she continued to work as a part-time nurse prior to her promotion, other than for reasons that she is African American.¹¹ The appellant argues that R.B., as the Director of Nursing, was aware that V.S. was not working as a pool nurse at the time of her 2020 appointment as a Charge Nurse, 12 months.¹² Moreover, the appellant asserts that, as of March 2021,

⁶ The appellant confirms in this matter that her regular work hours are Sunday, Monday, Thursday, and Friday from 7:30 PM to 3:30 AM. The appellant states that the staffing sheets are examples of the unfair, impartial treatment in the workplace.

⁷ The appellant maintains that the EEO investigation should have revealed that V.S. was ineligible for appointment as a pool nurse.

⁸ The appellant contends that another African American nurse was threatened to be removed from payroll after three weeks of not working if she did not work the required hours established for pool nurses. The appellant states that the African American nurse was the only nurse who was required to work the hours as set forth in the pool nurse policy. The appellant maintains that the reason the other African American nurse was not appointed was because of her race. The appellant does not provide the name of this employee on appeal.

⁹ There is no evidence that the appellant filed an EEO complaint in 2011 or during her employment as a Staff Nurse.

¹⁰ The appellant states that employees consider working on the day shift and having off duty every other weekend as a "fringe benefit," and the night shift is not considered as a fringe benefit.

¹¹ The appellant states that, in 2013, R.B. informed her that there was a full-time Charge Nurse position for the evening shift, which would create a hardship to work that shift as she has children. The appellant states that R.B. hired V.S. in 2020 as a Charge Nurse, with permanent part-time status, despite that she had no seniority.

¹² The appellant contends that an African American nurse was asked to report for duty since V.S. was not working, and she was threatened with termination if she did not report for duty.

R.B. appointed another Caucasian nurse, E.E., as a Charge Nurse, 12 months on a full time basis, who was not eligible for such an appointment.¹³

The appellant states that, as of 2020, S.C. was employed as a Human Resources Manager at the time she submitted grievances with respect to her concerns, and he was responsible for V.S.'s appointment based on preferential treatment.¹⁴ As such, the appellant contends that the EEO's statements pertaining to S.C. not being employed at the time of V.S.'s appointment is false.¹⁵ The appellant also takes issue with an e-mail sent by the EEO's investigator.¹⁶ The appellant questions why other qualified African American nurses were not appointed as a Charge Nurse, when the only requirements for the position are possession of one year of nursing experience in a hospital, facility, or institution. Additionally, the appellant states that the EEO falsely states that V.S.'s salary is less than the appellant's. The appellant asserts that she alleged that she has been working as a nurse longer than V.S., and she did not make any allegations that she makes less than V.S.¹⁷ The appellant states that, at the time she was hired as a Staff Nurse, her salary was not as lucrative as V.S.'s salary. Moreover, the appellant asserts that L.R. and Z.B. were allowed to adjust their evening shift hours to the day shift for special assignments,

¹³ The appellant states that E.E. is assigned to the day shift. The appellant also states that Caucasian nurses E.E., D.T., and E.C., Charge Nurses, 12 Months, are assigned a Licensed Practical Nurse (LPN) to assist them, and an LPN is not assigned to her on a regular basis. The appellant states that, when she asked for assistance with dispensing medication, she was informed, "As staffing permits, we will try to accommodate you; if you need help with some of your tasks then we can reach out to one of your peers to assist you." The appellant states that, when working during the State of Emergency as Head Nurse, R.B. authorized her to work overtime on some occasions in order for her to complete her assignments, since her supervisors refuse to assign her a nurse assistant. Moreover, the appellant states that the reason her duties are different from V.S.'s is not because she is assigned to a cottage. In this regard, the appellant explains that V.S.'s duties do not include Float Nurses, LPN duties, and the administration of medication. The appellant states that since V.S. is not assigned to a cottage, she is not responsible to perform LPN or medication duties. The appellant states that the primary duties of a Head Nurse do not include medication duty.

¹⁴ The appellant states that she did not allege any information in her EEO complaint with respect to S.C. not being employed at the appointing authority in 2015, and as such, she contends that the EEO's reference to such information should not be considered.

¹⁵ The appellant notes that, if records dating back to 2015 were reviewed, the EEO would have seen that she mentioned that another African American employee, C.H., a Charge Nurse, 12 Months, was not as fortunate as V.S. The appellant states that C.H. worked a number of years on night shift. The appellant adds that C.H. was assigned to dispense medications as a Float Nurse while serving Staff Nurse and as a Charge Nurse. The appellant also notes that another African American employee, C.O.T.T., was not appointed as a Charge Nurse despite her qualifications. Personnel records reflect that C.O.T.T. is serving as a Medical CWA position, which is not a Civil Service title and is not a permanent appointment.

¹⁶ The appellant states that on September 2, 2020, the EEO investigator knew that her allegations were pertaining to race, yet the investigator stated, "I understand that [V.S.] was hired as a Charge Nurse very quickly. What is it that [the appointing authority] should be giving you that you do not have?" The appellant states that such a question is offensive and makes the EEO investigator unfit to participate in her EEO investigation.

¹⁷ The appellant states that she alleged that V.S.'s salary is considered "premium," despite that she does not possess seven years of continuous service as a nurse at the appointing authority.

which were not listed on the staff assignment sheets. The appellant maintains that such special assignments are not offered to African American nurses. The appellant states that, when she asked to be assigned during the day to a special assignment, she was told that she could not be assigned to such work as she was assigned to a cottage.¹⁸ The appellant states that the Caucasian nurses who are assigned to the special assignments, including V.S.,¹⁹ are provided with preferential treatment, and the appellant maintains that R.B. prevents her from working on special assignments as a result of her race.²⁰ The appellant also contends that V.S. was assigned to perform supervisory duties as an “in-charge” assignment, and the appellant was not provided with the same opportunity. The appellant adds that, in November 2020, she was asked to work for a Caucasian nurse, E.C., who was assigned to a special assignment.²¹ As such, the appellant asks to be assigned to work on special assignments from this point forward, for additional nurses to assist her with her assignments, and for any adjustment in seniority that she is due. In support of her claims, the appellant provides additional copies of nursing staff assignment sheets.²²

In response, the EEO maintains there was no violation of the State Policy. Specifically, the EEO asserts that the appellant did not apply for the same Charge Nurse, 12 Months position to which V.S. had applied. The EEO explains that in 2020, a vacancy was posted for a part-time Charge Nurse, and V.S. was appointed to that position as she possessed prior Charge Nurse experience. The EEO states that R.B. denied that race was a factor with respect to V.S.’s appointment. The EEO adds that J.J. confirmed that the majority of the appellant’s duties do not include dispensing medication, and she does not use favoritism with respect to V.S.’s assignments. J.J. explained that the appellant’s assignments are based on the legitimate business needs of the agency, and she often covers shifts as a Head Nurse. Further, the EEO states that R.T. confirmed that the appellant is only assigned to dispense medication when an LPN is not on duty. The EEO asserts that R.T. explained that the appellant’s and V.S.’s duties differ, since the appellant is assigned to a specific cottage and V.S. is assigned as a “float” nurse.

¹⁸ The appellant states that, although R.B. claims that he assigns nurses who are available as needed, there are four nursing supervisors who can perform any of the supervisory tasks. The appellant states that, at the time she submitted the appeal, there are three African American Charge Nurses who are assigned to day shift, and 11 Caucasian Charge Nurses who work on a full time basis. The appellant states that only one full time African American Charge Nurse has been appointed within the previous nine years.

¹⁹ The appellant states that V.S. does special assignments in the form of paperwork.

²⁰ The appellant maintains that she is equally qualified as Z.B. and L.R. for the special assignments.

²¹ The appellant states that she informed the EEO investigator that she has asked for special assignments.

²² The additional nursing staff assignment sheets do not appear to have been reviewed by the EEO at the time the investigation was conducted.

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:7.3-2(m)(3) states, in pertinent part, that the appellant shall have the burden of proof in all discrimination appeals.

In this matter, the appellant argues that V.S., a Caucasian female, was provided with preferential treatment at the time of her appointment as a Charge Nurse, 12 Months, and the appellant was not provided with similar employment opportunities. Specifically, the appellant contends that V.S. was appointed as a Charge Nurse, 12 Months prior to when she was appointed to the title, that V.S. was not qualified for an appointment as a Charge Nurse, and that V.S. is assigned to day shift while the appellant is assigned to the night shift. The appellant also contends that her assignments include medication dispensing duties and working in a cottage, which is not favorable to her. The appellant states that V.S. works as a “float nurse,” and other African American nurses have less favorable assignments. The appellant contends that such preferential treatment is based on race, and her supervisors, R.B., S.C., R.T., and J.J., perpetuated such discriminatory action toward her.

The Civil Service Commission (Commission) has conducted a review of the record in this matter and finds that the appellant has not established that she was subjected to discrimination in on the basis of race in violation of the State Policy. The record reflects that the EEO conducted a proper investigation. It interviewed the relevant parties in this matter and appropriately analyzed the available documents in investigating the appellant’s complaint. The underlying determination was correct when it determined that there was no violation of the State Policy. The appellant’s arguments on appeal and the allegations of her complaint do not evidence that she was discriminated against based on any of the above listed protected categories listed in the State Policy. The EEO interviewed the appellant’s supervisors, R.B., S.C., R.T., and J.J., and they denied the allegations against them. The appellant has provided no substantive information in this matter to show that she was singled out in the workplace by R.B., S.C., R.T., and J.J., or that her assignments are based on race.

With respect to the appellant’s allegations regarding V.S.’s appointment as a Charge Nurse, 12 months, the investigation revealed that the appellant did not apply for the same Charge Nurse, 12 Months position to which V.S. had applied, and that V.S. was the only applicant to that vacancy. The investigation also revealed that V.S. possessed prior Charge Nurse experience. Indeed, the record reflects that she served

at the appointing authority in that position from June 27, 2015 to March 17, 2018, and such experience led to V.S.'s appointment to that position effective April 11, 2020. Moreover, V.S. was appointed through the non-competitive process through Civil Service, which only requires that an applicant meet the minimum qualifications listed in the job specification to be eligible for appointment. As such, the appellant's claim that V.S. was not qualified for an appointment as a Charge Nurse, 12 Months is without merit. Additionally, the record reflects that the appellant was appointed as a Charge Nurse, 12 Months, effective February 17, 2018. At that time, V.S. was serving in a Medical, CWA position, and therefore, the appellant was appointed permanently in that title prior to V.S.'s 2020 appointment. Moreover, there is no evidence that V.S.'s appointment had an adverse affect on the appellant's appointment. Although the appellant appears to claim that she experienced discrimination prior to when she filed the August 2020 EEO complaint, the Commission cannot now review such concerns, as they occurred prior to when she filed the complaint.

With respect to the appellant's assignments, such information does not, in and of itself, substantiate a violation of the State Policy. The appellant's duties of dispensing medication and working in a cottage are within the regular duties that may be performed by a Charge Nurse, 12 Months. Based on the appellant's description of her duties, such assignments are proper for her position, and the fact that she views them as "less favorable" do not establish her claims in this matter. Moreover, based on the operational needs of the agency, it is at the appointing authority's discretion to assign an LPN or additional nurses to assist the appellant with her duties. Additionally, with respect to V.S.'s duties, the EEO interviewed R.B., S.C., J.J., and R.T., and they denied the allegations and that V.S.'s duties were based on race. In this regard, J.J. confirmed that she does not engage in favoritism when assigning work, and she confirmed that the appellant's assignments are based on the legitimate business needs of the agency. J.J. also confirmed that the majority of the appellant's duties do not include dispensing medication, but rather, the appellant is often assigned as a Head Nurse in a specific cottage. R.T. confirmed that the appellant is assigned to dispense medication when the LPN is not on duty, and that the appellant's duties may differ from V.S.'s, as V.S. is often assigned as a float nurse. Although the appellant's and V.S.'s duties may differ, such information, in and of itself, does not show that the appellant was subjected to discrimination with respect to her assignments. With respect to the appellant's complaint that she is assigned to the night shift, there is no substantive evidence to show that the appellant was informed prior to the acceptance of her appointment as a Charge Nurse that she could only work on the night shift, and regardless, she did not have to accept the position if the night shift was not her preferred shift. Her assignment on the night shift, in and of itself, does not substantiate a violation of the State Policy. Other than the appellant's claims that the night shift is less favorable to her, she has not provided

any other reason in this matter to show why she is unable to work on the night shift.²³ Moreover, there is no substantive information in this matter to show that the appellant was denied any employment opportunities or assignments since the time she was appointed as a Charge Nurse, 12 Months. The nursing staffing sheets the appellant provides on appeal do not substantiate her claims with respect to her assignments. As such, there is no evidence to establish that she was subjected to a violation of the State Policy.

With respect to the appellant's objections to the EEO's statement that J.J. and R.T. are African American, although the appellant correctly states that a member of the same race can subject another individual of the same race to discrimination, as noted above, there is no substantive evidence to show that J.J. and R.T. subjected the appellant to discrimination based on race. Although the EEO indicated that J.J. and R.T. are African American, such information was not sole basis for the EEO's determination. Such information, in and of itself, is not sufficient in this matter to show that the EEO incorrectly concluded that the appellant was not subjected to discrimination.

With respect to the appellant's additional claims pertaining to other African American nurses not being provided with various assignments and employment opportunities, this agency's records do not reflect that those individuals filed an appeal with this agency. That information, as well as the additional allegations that she is not assigned to special assignments, that she works with COVID infected patients, that additional Caucasian Charge Nurses were appointed and their assignments were more favorable, and the additional staffing sheets she provides on appeal, appear to be new allegations that were not submitted to the EEO for review. Therefore, if the appellant believes that those allegations demonstrate some form of discrimination against her based on the State Policy, she may file a new complaint with the EEO, so that it may conduct an investigation of the new allegations. If the appellant disagrees with the outcome of the EEO's new investigation, she may file an appeal of that determination with this agency.

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.

²³ Although the appellant states she has children, she has not indicated that taking care of her children is the reason why she would like to work on the day shift, nor has she provided any other reason why she must work the day shift.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 27TH DAY OF OCTOBER, 2021



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