



**STATE OF NEW JERSEY**

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

In the Matter of P.T., Department of  
Human Services

CSC Docket No. 2022-200

Discrimination Appeal

**ISSUED: SEPTEMBER 24, 2021  
(SLK)**

P.T., a Construction Management Specialist 2, appeals the decision of an Assistant Commission, Division of Developmental Disabilities, Department of Human Services, which was unable to substantiate her allegations that she was subject to discrimination in violation of the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy).

By way of background, P.T., an African-American female, alleged that S.S., a Caucasian male Senior Executive Service, retaliated against her for parking in a space that the Commissioner’s driver wanted (allegation one). She also alleged that S.S. removed her assigned State vehicle because of her color, race, and gender (allegation two). Additionally, P.T. alleged that S.S. and D.M., a Caucasian female Senior Executive Service, “involuntarily transferred”<sup>1</sup> her from the Central Office to Quakerbridge Plaza because of her color, race, and gender. Further, she alleged that S.S. and D.M. “temporarily transferred” her for longer than six months. Also, P.T. alleged that S.S. and D.M. gave her no notice, removed her e-mail account, and had the Human Services Police (HSP) escort her out of the building because of her color, race, and gender prior to the transfer (allegation three). Further, she alleged that the appointing authority denied her a promotion to Construction Management

<sup>1</sup> While the parties refer to P.T.’s movement to a new location as an involuntary or temporary transfer, the record indicates that her movement was a reassignment under *N.J.A.C. 4A:4-7.2*.

Specialist 1 because of her color, race, and gender (allegation four). Moreover, P.T. alleged that the appointing authority denied her a promotion to Building Manager because of her color, race, and gender (allegation five). Additionally, she alleged the appointing authority discriminated against her by failing to hear her grievance concerning an ADA Accommodation (allegation six). Finally, P.T. alleged that J.B., a Caucasian male Construction Management Specialist 1, discriminated against her (allegation seven). However, after interviews and reviewing relevant documentation, the Equal Employment Opportunity Office (EEO) was unable to substantiate the allegations.

On appeal, P.T. presents that she is appealing the determination of her complaints because information and evidence for her complaints was not presented nor was it asked for and she submits documents to support her claim. P.T. indicates that she has mostly been working remotely during the pandemic and her documentation and evidence was too much to fax and she did not have scanning capabilities. She explains that she was willing to deliver the documents; however, the investigator replied advising her not to stress about getting her documents as he was developing his own documents. P.T. questions how her examples or displays of mistreatment could be developed without her providing documents. She states that she never spoke to the investigator. P.T. indicates that she presented two witnesses who could validate her comments, but only one was contacted.

P.T. explains that she was sent to another building where she was told that she was needed. However, she indicates that she has not been given consistent work and she has not been given anything in writing stating that her temporary status has been extended or she has been permanently reassigned to the Division of Aging Services (Aging Services). P.T. states that S.S. kept telling her that there was no work for her in the Central Office facilities. However, since she was moved, she presents that C.D., a Caucasian male Building Manager, was hired to do the job she was doing. Further, on the day that she moved to Aging Services, it offered J.B. the position of Construction Management Specialist 1, which is a position that they both interviewed for as well as getting rid of her immediate supervisor, J.R., a Caucasian male Management Improvement Specialist 1, who is also one her witnesses.

P.T. requests that she be reassigned back to her original position that she was hired for in the Central Office facilities without any retaliation or bullying from the management there. She indicates that she filed grievances regarding a medical condition that does not allow for her to be in colder temperatures. However, P.T. states that the appointing authority insists on her staying in Building 12 at Quakerbridge Plaza even though she explained that her old building was more suitable because the heat is controlled better in that building than the current one.

P.T. indicates that she is no longer privy to certain e-mails since she was moved from the Central Office building. She explains that some of those e-mails speak to instances as to why her vehicle was removed. P.T. presents that S.S. stated that J.R.

never told him or wrote a justification as to why she needed a vehicle; however, she asserts that this is clearly a lie because he was told on several occasions. She states she is not sure why her State vehicle was taken away from her while she was still working in the same department because she knows others who moved to the same exact building and kept all their items such as cell phones, e-mails, and work passes. P.T. states that she is unsure what information was reviewed prior to the determination letter, and requests to submit a binder of detailed e-mails of her mistreatment along with a binder of her personnel file. She notes that she has filed a complaint with the Equal Employment Opportunity Commission and she is awaiting her interview along with a Division on Civil Rights complaint.

In response to P.T.'s claim that her evidence was not presented or asked for, the EEO advised her that interviews were being conducted remotely due to Covid-19. Further, since P.T. did not have access to a scanner, it advised that she could copy and mail her documents, fax them, or take a photograph on her cell phone and e-mail them as these were all ways complainants regularly submit documents. Additionally, the EEO advised P.T. that she could request access to a scanner at Quakerbridge Plaza. Despite these offers, P.T. did not submit additional documents by mail, fax, or e-mail. Further, the investigator offered to pick up documents on June 3, 2021, or asked if there was another arrangement to be made. However, P.T. responded that she "really would like not to copy because it's a large full 3-inch binder" and she would "see how to go about getting the copies that are relevant." Thereafter, on July 15, 2021, P.T. sent the EEO an e-mail stating "I believe that I submitted and provided all information to (the investigator) that was requested." Additionally, while P.T. complains that she was never interviewed, the investigator e-mailed her on June 10, 2021, advising her to contact him if she had any concerns or questions. Also, P.T. did not raise any objections when the investigator asked her to answer interview questions via e-mail.

Concerning P.T.'s comments about witnesses, she stated that she "gave two witnesses only one that I know of was contacted," the EEO reminds that all witnesses and parties to investigations are confidential, and any witnesses should not be discussing with each other their contacts with EEO. Further, while P.T. claims that the Department got "rid" of her immediate supervisor, J.R., who is also one of her witnesses, J.R. still works for the Department and was contacted by the investigator. Additionally, J.R. advised the investigator that for operational reason, he was demoted from Director of Facilities and Support to Director, Fiscal Projects and Support. The investigation revealed that the Department reassigned J.R., a Caucasian male, to a different work location, just as it did with P.T. J.R. informed the investigator that he was reassigned from the Central Office to the Division of Developmental Disabilities, Mays Landing Office and his method of transfer was like P.T.'s as he described the decision was "sudden," and he turned in his State cell phone, parking pass, access card and keys. Also, HSP escorted him out of the Central Office and he reported to the Mays Landing Office the next day. He also received a new e-

mail address associated with his change in work location. Additionally, while P.T. asserts that J.R. told S.S. why she needed a State vehicle, P.T. never stated what J.R. allegedly told S.S. and she did not produce any evidence regarding any written or verbal justification J.R. provided to S.S. for a vehicle to be assigned to her.

The investigation revealed that P.T.'s temporary transfer to Aging Services in Quakerbridge Plaza did not change her position as she retained her title and compensation level and her "temporary transfer" was for operation needs. Specifically, Aging Services expressed a need for facilities support, while there was simultaneously a significant decrease in the amount of facilities work at the Central Office. P.T. also claims that she knows of others who were moved and allowed to keep all their items, but she did not provide any names and there is no evidence that her reassignment was treated any different than anyone else's. The appointing authority notes that State cell phones, e-mails and work passes are not the property of the employee, but property of the State. Also, P.T. had the opportunity to submit her binders of e-mails of her "mistreatment" and a "binder of my personnel file," but she did not.

Regarding the allegations, the appointing authority indicates that the investigation did not substantiate and violations of the State Policy. In this regard, it presents that P.T. admitted that the retaliation she alleged was for parking in a space desired by someone else and not because of her involvement in a prior discrimination investigation. Further, she did not support her allegation that anything happened to her due to her age.

Regarding the removal of an assigned vehicle, the investigation revealed that it was uncontested that this was S.S.'s decision. P.T. claimed that her vehicle was removed, in part, because she parked in a space desired by the Commissioner's driver. Therefore, it found this to be a non-discriminatory claim. She also claimed that the vehicle was removed because of her color, race, and gender as she was the only African-American female performing her duties. P.T. claimed that the Director of Property Management and Construction was Caucasian and had a vehicle assigned to him. She also claimed that two of his subordinates have an assigned vehicle and one of them is Caucasian. S.S. presented that P.T.'s assigned vehicle was removed because it had confidential plates, which were unauthorized, and facilities staff have no need for permanent vehicles because they have access to vehicles during their normal shifts. Additionally, he indicated that P.T. only used a vehicle about three times in the past year and mileage reimbursement was available. Further, P.T. supervised staff who were responsible for managing the vehicle fleet and she was remiss in not ensuring that there were proper plates on her car. Also, S.S. indicated that P.T.'s supervisor was asked to provide justification for her vehicle, but the vehicle was removed when no justification was provided. Instead, he contended that no other employees in Facilities Support Services had an assigned vehicle.

Concerning her reassignment, P.T. complained she was reassigned because of her color, race, and gender and her evidence was that she was the only African-American female in her position. She stated that S.S. advised her that she was reassigned due to a lack of work at the Central Office facility. The appointing authority notes that it is uncontested that it reassigned P.T. for more than six months. However, it notes that this is a contractual issue, and not a State Policy one, which should be resolved through grievance procedures. Further, P.T. complained that S.S. and D.M. removed her without notice, removed her from the e-mail system, removed her phone, and had HSP escort her from the building. The investigation revealed that other recent reassignments were conducted in the same manner, including seven employees identified by the investigator, which involved a mixed-race female, a Hispanic male, an African-American female, two Caucasian males, an Asian male, and a Hispanic female. D.M. and S.S. agreed that the method of transfer was a human resources matter and it was unwritten policy that reassignments be handled in that matter. S.S. indicated that P.T. was reassigned to Aging Services because it needed facilities support and L.R., Division Director, who would supervise P.T., liked her experience. Additionally, S.S. stated that her reassignment was part of the restructuring of Facilities Management for operational efficiency. He also questioned P.T.'s decision-making concerning supervision of the fleet and thought that a reassignment would be beneficial to all. Therefore, the investigation found that her reassignment was made for legitimate, non-discriminatory reasons.

Referring to the Construction Management Specialist 1 position, P.T. contended she was denied the promotion because of her color, race, and gender; however, she provided no specific evidence of discrimination, did not appeal the Department's decision to deny her promotion to this agency, and the investigation revealed no evidence of discrimination. Regarding the Building Manager position, she also alleged she was denied this position due to her race, color, and gender; however, she provided no evidence to support her allegation. The appointing authority presents that P.T. was one of three candidates and the interview panel consisted of an African-American female, a Caucasian male, and a Caucasian female. Each of the three suggested C.D. for the position. Further, an examination of the contemporaneous notes of the interviewers showed unanimous positive comments for C.D. In contrast, the notes from the interviewers revealed that P.T. may not have answered one question and her response to a different question was weak and incomplete. Therefore, there was no evidence of discrimination regarding either application.

Concerning the ADA grievance, P.T. requested an accommodation in December 2019 to work in an environment where the ambient temperature was 72 degrees or above because of a medical condition. In January 2020, N.B., then-ADA Coordinator, offered an accommodation of workspace at Quakerbridge Plaza in a cubicle that has its own heat panel and the temperature can be maintained at or above 72 degrees. P.T. refused to accept the accommodation, saying that the heat panels do not always

work properly. Thereafter, she filed a grievance on March 2020, contending that the only facility that could accommodate her was the Central Office. C.B., the new ADA Coordinator, attempted to negotiate a resolution, informed P.T. that she did not receive an additional medical certification as requested, and the Central Office was not available. Subsequently, the hearing on the matter that was scheduled for March 2020 was postponed due to Covid-19 concerns and the Office of Employee Relations (OER) had not heard the matter. However, the Director of OER agreed that the matter should be scheduled and heard. Therefore, there was no evidence that she was discriminated against based on her disability during that process.

Finally, regarding J.B., P.T. made no specific allegation of discrimination against him as she was unable to define specific discriminatory behavior by him. She complained that he treats her dismissively and only talks to Caucasian males. J.B. denied ignoring or dismissing her and denied speaking with Caucasian males instead of her. Further, P.T. did not provide any evidence to corroborate her allegation against him.

The appointing authority emphasizes that P.T. has not provided one scintilla of evidence that she was discriminated against by anyone and she has the burden of proof. At one point, P.T. described her treatment as more of a “personal attack” and when asked if she believed her reassignment was because of age, she replied that she was older than S.S. and maybe he had an issue with her having the experience and knowledge that she has. It argues that P.T.’s allegation that her treatment was personal undermines her claim that her treatment was based on various protected classes.

## CONCLUSION

*N.J.A.C.* 4A:4-7.2 provides that a reassignment is the in-title movement of an employee to a new job function, shift, location or supervisor within the organizational unit. Reassignments shall be made at the discretion of the head of the organizational unit.

*N.J.A.C.* 4A:4-7.7 provides that transfers, reassignments or lateral title changes shall not be utilized as part of a disciplinary action, except when disciplinary procedures have been utilized. When an employee challenges the good faith of a transfer, reassignment or lateral title change, the burden of proof shall be on the employee.

*N.J.A.C.* 4A:7-3.1(a) states, in pertinent part, that the State of New Jersey is committed to providing every State employee and prospective State employee with a work environment free from prohibited discrimination or harassment. Under this policy, employment discrimination or harassment based upon race, color, gender, age and disability is prohibited.

*N.J.A.C.* 4A:7-3.1(h) provides 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 subject of other retaliation.

*N.J.A.C.* 4A:7-3.1(j) provides, in pertinent part, to protect the important privacy interests of all concerned, the EEO/AA Officer/investigator shall request that all persons interviewed, including witnesses, not discuss any aspect of the investigation with other, unless there is a legitimate business reason to disclose such information.

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

Under the ADA, the term "reasonable accommodation" means: (1) modifications or adjustments to a job application process that enable a qualified applicant with a disability to be considered for the position such qualified applicant desires; (2) modifications or adjustments to the work environment, or to the manner or circumstances under which the position held or desired is customarily performed, that enable a qualified individual with a disability to perform the essential functions of that position; or (3) modifications or adjustments that enable a covered entity's employee with a disability to enjoy equal benefits and privileges of employment as are enjoyed by its other similarly situated employees without disabilities. A reasonable accommodation may include, but is not limited to: (1) making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and (2) job restructuring: part-time or modified work schedules; reassignment to a vacant position; acquisition or modifications of equipment or devices; appropriate adjustment or modifications of examinations, training, materials, or policies; the provision of qualified readers or interpreters; and other similar accommodations for individuals with disabilities. *See 29 C.F.R.* § 1630.2(o) (1999).

Further, the ADA requires that, where an individual's functional limitation impedes job performance, an employer must take steps to reasonably accommodate, and thus help overcome the particular impediment, unless to do so would impose undue hardship on the employer. *See 29 C.F.R.* § 1630.2(p). Such accommodations usually take the form of adjustments to the way a job customarily is performed, or to the work environment itself. This process of identifying whether, and to what extent,

a reasonable accommodation is required should be flexible and involve both the employer and the individual with the disability. No specific form of accommodation is guaranteed for all individuals with a particular disability. Rather, an accommodation must be tailored to match the needs of the disabled individual with the needs of the job's essential function. The ADA does not provide the "correct" answer for each employment decision concerning an individual with a disability. Instead, the ADA simply establishes parameters to guide employers in how to consider, and to take into account, the disabling condition involved. *See* 29 *C.F.R.* § 1630.2(o) and 29 *C.F.R.* § 1630.9.

It is noted that in providing an accommodation, an employer does not have to eliminate an essential function or fundamental duty of the position. This is because a person with a disability who is unable to perform the essential functions, with or without a reasonable accommodation, is not a "qualified" individual with a disability within the meaning of the ADA. *See* 29 *C.F.R.* 1630.2. *See also* *Ensslin v. Township of North Bergen*, 275 *N.J. Super.* 352, 361 (App. Div. 1994), *cert. denied*, 142 *N.J.* 446 (1995) (No reasonable accommodation of Police Sergeant's disability would permit him to perform essential functions of job, and thus the township did not violate the New Jersey Law Against Discrimination by terminating the Sergeant after he was rendered paraplegic in skiing accident); *Albertson's Inc. v. Kirkingburg*, 527 U.S. 555 (1999) (Truck driver with monocular vision who failed to meet the Department of Transportation's visual acuity standards was not a "qualified" individual with a disability under the ADA).

*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, P.T. complains that she did not have access to a scanner and all her evidence, which includes a binder of e-mails and a personnel file, was not sent and reviewed by the investigator. Further, she complains that she was not interviewed. P.T. also states that she had two witnesses who could verify the discriminatory treatment against her, and only one was interviewed. However, the record indicates that P.T. was advised that she could copy her files and she could either mail her copies or her copies could be picked-up by the investigator at an agreed upon time and location, she could fax her information, she could take photographs of her information on her cell phone and e-mail the information, or she could be provided access to a scanner at a State building and then e-mail the information. However, P.T. apparently chose not to take advantage of any of these options and advised the EEO that she submitted all relevant documents. Therefore, the record reveals that P.T.'s claim in this regarding is without merit. Similarly, P.T. states that she was not interviewed. However, the record reveals that she agreed to submit her answers to questions via e-mail. Further, she was specifically advised to contact the investigator if she had any questions or concerns and she did not complain or otherwise indicate that a remote interview was necessary. Moreover, P.T. claims that one her witnesses



was not interviewed. However, she does not specifically witness' name and as the EEO highlights that investigations are conducted in a confidential manner to the extent possible. Therefore, it is unclear what witness that P.T. presented was not interviewed. Regardless, the one interview that P.T. acknowledges was with J.R., who, contrary to her statement, did not confirm that she was subjected to discriminatory treatment when her State vehicle was removed. Instead, he indicated there was no justification for her to have a State vehicle.

Additionally, on appeal, P.T. requested to submit the binders that she did not submit to the investigator. However, the record indicates that this agency sent a letter to the parties advising them to submit additional information and P.T. has not responded to the appointing authority's response to her appeal, has not submitted her binders to this agency, nor has she contacted this agency to make arrangement so that she could send her binders. Regardless, even if P.T. had submitted her binders, there is nothing in the record to suggest that despite the large volume of information that she wished to be considered, there was any e-mail or other documentation that would indicate that the reason for any action that was taken was based on her membership in a protected class in violation of the State Policy. E-mails describing her alleged "mistreatment" without indicating a nexus to her membership in a protected class are not evidence that she was subjected to discrimination.

Further, the retaliation allegation was based on her parking in a space desired by someone else, and not based on her prior involvement in a State Policy complaint. As such, the alleged "retaliation" is not retaliation as defined by the State Policy. Regarding her State vehicle being taken away from her, the record indicates that this was done for legitimate business reasons as she had little need to use a State vehicle and could be provided one during her shift or reimbursed for mileage when needed and her supervisor indicated that no other employees in Facilities Support Services had an assigned vehicle. Referring to her "involuntary or temporary transfer," reassignments are at the discretion of the of the head of the organizational unit under *N.J.A.C. 4A:4-7.2*. Further, there is no requirement under Civil Service rule or law that she be given written notice that her temporary status has been extended or she has been permanently reassigned. It also noted that under Civil Service regulations, a reassignment can be more than six months, even permanent, and whether she has a contractual claim in that regard would need to be addressed in another forum. The record indicates that P.T., along with many other employees, which included all genders and races, were reassigned in a similar manner from the Central Office to other locations due to changing needs because of the pandemic and/or other operational needs. Further, there was no evidence in the record that she was denied a promotion to Construction Management Specialist 1 or Building Manager based on her membership in a protected class. To the contrary, the record indicates that P.T. did not perform as well on her interview for Building Manager as the appointee. It is noted that the mere fact that Caucasian males were appointed to her desired positions, without any other evidence that the appointments were based on one's race

and/or gender, is insufficient to support a finding that the appointments in question violated the State Policy. Also, the record indicates that the P.T. was offered a cubicle that had a temperature control panel to accommodate her request that she needed to be in an environment that had a temperature of 72 degrees or more. However, P.T. declined that accommodation as it was not in the Central Office. Further, the record indicates that her hearing on the matter was postponed due to the pandemic and the appointing authority has agreed to reschedule the matter. As such, there is no evidence in the record that her accommodation request has been treated in a discriminatory way. Finally, P.T. offered no specific discriminatory acts by J.B. and no evidence to support her allegation against him.

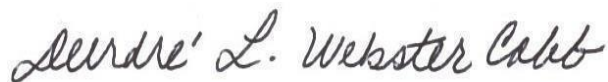
While P.T. disagrees with the actions of the appointing authority and specific coworkers, disagreements between co-workers cannot sustain a violation of the State Policy. *See In the Matter of Aundrea Mason* (MSB, decided June 8, 2005) and *In the Matter of Bobbie Hodges* (MSB, decided February 26, 2003). Moreover, P.T. has not provided one scintilla of evidence that any actions taken by the appointing authority or specific coworkers were based on her membership in a protected class. In fact, the evidence indicates that all actions were based on legitimate business reasons. Regardless, mere speculation, without evidence, is insufficient to support a violation of the State Policy. *See In the Matter of T.J.* (CSC, decided December 7, 2016). Therefore, based on the evidence presented to the EEO and in this appeal, the Commission is unable to substantiate that P.T. was subjected to a State Policy violation.

### 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 22 DAY OF SEPTEMBER, 2021



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