



**STATE OF NEW JERSEY**

In the Matter of A.O., Department of  
Law and Public Safety

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

CSC Docket No. 2022-1513

Discrimination Appeal

**ISSUED: MARCH 25, 2022 (SLK)**

A.O., an Administrative Analyst 3, with the Department of Law and Public Safety, Division of State Police, appeals the decision of a Chief Ethics and Compliance Officer, which was unable to substantiate his allegations that he was subject to discrimination in violation of the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy).

By way of background, A.O. an African-American male, alleged that F.K., a Caucasian male Special Services<sup>1</sup>, and G.Z., a Caucasian male Manager 2, Department of Law and Public Safety, treated A.O. differently based on his race and national origin. Specifically, A.O. alleged that he was discriminated against by being given “dead-end” tasks and then given a low Performance Assessment Review (PAR) rating based on the more advanced skills for which he was denied training; S-K.M., an Asian-American male Administrative Analyst 4, Accounting<sup>2</sup>, was given preferential treatment; A.O. was subjected to incendiary remarks due to his race and national origin, passed over for promotion on three separate occasions, and told by F.K. that he had gotten rid of the previous Nigerian employee. However, after interviews of relevant witnesses and documentation, the Equal Employment Opportunity Office (EEO) was unable to substantiate the allegations. Regarding

<sup>1</sup> Personnel records indicate that F.K. had been an Administrative Analyst 4 prior to starting as a Special Services in November 2021.

<sup>2</sup> Personnel records indicate that S-K.M. was promoted from Administrative Analyst 3 to Administrative Analyst 4, Accounting, effective January 2, 2021.

being given “dead-end” tasks and his low PAR rating, the evidence showed that the task that A.O. was assigned, and he described as “dead-end,” was how all Administrative Analysts were initially trained, with some flexibility for the level of experience of the individual. Further, the investigation revealed that documentary evidence and corroborating witness statements showed that A.O.’s inability to move forward in training was due to performance issues, not discriminatory animus based on his race or national origin. Additionally, there was no corroborating evidence that F.K. and G.Z. gave S-K.M. preferential treatment. Also, there was no corroborating evidence that F.K. and G.Z. made incendiary remarks and comments or that there was a sufficient connection between the alleged remarks or conduct and A.O.’s race or national origin. Concerning A.O.’s alleged self-described “heavy” accent, there was no corroborating evidence that he was set apart due to his accent. Referring to A.O. being passed over for promotion, there was no corroborating evidence that F.K. and G.Z. passed over A.O. for promotion on any occasion as they did not have the authority to appoint A.O. to a position. Finally, there was no evidence that F.K. told A.O. that he had gotten rid of the previous Nigerian employee.

On appeal, A.O. asserts that the findings and assertions in the determination letter are not factually accurate. He claims that a “blatant cover-up” occurred.

In response, the appointing authority presents that A.O. was a Senior Fiscal Analyst at the time of his complaint in the Administrative Section of the State Police and he alleged that F.K. and G.Z., who were civilian employees in the Grants Accounting Unit, subjected him to State Policy violations. The investigation revealed that A.O. was not assigned “dead-end” tasks, but rather his training was the same training as others received for the same position. Further, A.O.’s low PAR rating derived from documented performance issues. Specifically, the investigation indicated that A.O. was tasked to create the State Comprehensive Financial System Report; however, F.K. and G.Z. provided emails that demonstrated that A.O. was unable to do this in the required time, causing them to not be able to move him to more sophisticated grant-related tasks, although they did so on occasion. Witnesses also confirmed that A.O. could not timely complete the report and there were also errors in the report.

Regarding S-K.M, A.O. described him as an “American raised Asian based on his diction and manner of speech” while S-K.M. self-identified as Chinese. The investigation found no corroborating evidence that S-K.M. received preferential treatment as F.K. and G.Z. denied it and the evidence showed that S-K.M. received similar training as A.O. and moved along slightly faster due to S-K. M.’s relatively greater grant experience.

Concerning alleged incendiary remarks and discriminatory conduct by F.K. and G.Z, A.O. alleged that G.Z. said, “I don’t really give a damn. I don’t care if you stay to the end of probation. You cannot work here. I am not the one who hired you.

You are going back to your old title. I don't care if you wait for the test. You are not staying here" as well as "I am glad you weren't here yesterday." However, the investigation found no corroboration of these remarks. A.O. also claimed F.K. compared their salaries at the start of their employment with A.O.'s being better, remarking that A.O.'s current salary was "pretty high pay." However, the EEO did not find the remarks bore a sufficient nexus to A.O.'s race or national origin.

Additionally, A.O. alleged that G.Z. required him to find a replacement when he was not present, which was not required for other employees. However, the investigation revealed that this was a common practice. Further, A.O. alleged that G.Z. would call A.O. into his office while leaving the door open so that people could hear G.Z. dress down A.O. However, this conduct was uncorroborated. Also, A.O. alleged that F.K. and G.Z. were unwilling to accept A.O.'s self-described heavy accent even when he spoke "slowly and clearly." However, the investigation did not corroborate that A.O. was treated differently based on his accent.

Further, A.O. alleged that F.K. and G.Z. passed him over for a promotion in 2016, resulting in his removal from his provisional appointment as an Administrative Analyst 3 and his return to his permanent Senior Fiscal Analyst title. A.O. also indicated that he was passed over for promotion twice in 2017. F.K. and G.Z. responded that they did not demote or fail to promote A.O. and the appointment process followed Civil Service protocols, which the investigation confirmed.<sup>3</sup> Additionally, the investigation revealed that in 2016, F.K. was not involved in A.O.'s promotion process and G.Z. was part of the January 2016 interview, which also had two other interviewers, and G.Z. scored A.O.'s interview in the middle of the two other interviewers. Also, all three interviewers scored A.O.'s interview as the lowest score of all the interviewees, which showed a consensus opinion that A.O. was the least suitable candidate for the position. Moreover, as it was the appointing authority for the State Police, and not F.K. nor G.Z., that made the decision to not appoint A.O., there was no evidence to substantiate A.O.'s claim that F.K. and G.Z. passed him over for promotion based on his race and/or national origin. Further, the investigation did not find that F.K. and G.Z. had any knowledge or in any way attempted to influence A.O.'s two additional attempts at promotion in 2017. Finally, there was no substantiating evidence that F.K. made a point of mentioning to A.O. that he "got rid" of another Nigerian employee.

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<sup>3</sup> Personnel records indicate that A.O. was bypassed in accordance with *N.J.A.C. 4A:4-4.8(a)3i*, the "Rule of Three," on certifications for Administrative Analyst 3 in March 2016 and March 2017. Also, there were two certifications that were recorded in December 2017 for Administrative Analyst 3, where A.O. was either in the first or second position on the certification; however, the list was incomplete, and no appointments were made. A.O. was permanently appointed as an Administrative Analyst 3, effective April 28, 2018.

In reply, A.O. asserts, in relevant part, that the procedure for a “demotion” was not followed and human resources ignored that demotion procedures were not followed.

## CONCLUSION

*N.J.A.C. 4A:7-3.1(a)* provides, in pertinent part, the State is committed to providing every State employee and prospective State employee with a work environment free from prohibited discrimination or harassment. Under this policy, forms of employment discrimination or harassment based upon race or national origin are prohibited and will not be tolerated. To achieve the goal of maintaining a work environment free from discrimination and harassment, the State strictly prohibits the conduct that is described in this policy. This is a zero tolerance policy. This means that the State and its agencies reserve the right to take either disciplinary action, if appropriate, or other corrective action, to address any unacceptable conduct that violates this policy, regardless of whether the conduct satisfies the legal definition of discrimination or harassment.

*N.J.A.C. 4A:7-3.1(a)3* provides that it is a violation of this policy to engage in any employment practice or procedure that treats an individual less favorably based upon any of the protected categories referred to in (a) above. 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.

*N.J.A.C. 4A:7-3.1(i)* provides that the burden is on the complainant to articulate a sufficient nexus between the alleged conduct to a protected category pursuant to the State Policy.

*N.J.A.C. 4A:7-3.2(m)4* provides that the appellant shall have the burden of proof in all discrimination appeals brought before the Civil Service Commission (Commission).

In this matter, A.O. claims that F.K. and G.Z. discriminated against him based on his race and/or national origin due the above-mentioned allegations. However, the investigation revealed that he was not assigned “dead-end” tasks as he was given the same tasks as others that were trained for his position. Additionally, his low PAR rating was based on documented performance issues, which were confirmed by witnesses, such as not completing a report in the required time and errors in the report. Further, S.-K.M. received similar training as A.O. and was moved along slightly faster due to his relatively greater grant experience. Additionally, there was no corroborating evidence that F.K. and G.Z. made alleged incendiary remarks to A.O., engaged in conduct that had a nexus to the State Policy, or discriminated

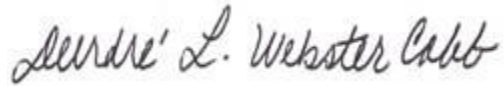
against him due to his accent. Moreover, the evidence revealed that A.O. was bypassed for positions as an Administrative Analyst 3 in 2016 and 2017 in compliance with Civil Service law and rules; F.K. had no involvement in this process; G.Z. was only involved in the January 2016 interview; G.Z.'s scoring of A.O.'s interview was in the middle of the two other interviewers; all the interviewers scored A.O.'s interview as the lowest among the interviewees; the appointing authority and not F.K. and G.Z. made the decisions on the appointments; and F.K. and G.Z. were not involved with the appointment process in 2017. Moreover, A.O. was not demoted as claimed. Instead, personnel records indicate that A.O. had been provisionally appointed as an Administrative Analyst 3 and then returned to his permanent title as a Senior Fiscal Analyst. A provisional appointee can be removed at any time and does not have a vested property interest in the provisional title. In other words, a provisional employee has no automatic right or expectation of achieving permanent appointment to the position to which he or she is occupying. *See O'Malley v. Department of Energy*, 109 N.J. 309 (1987). It is also noted that A.O. did not appeal his bypasses or non-appointments at the time they occurred, and he was appointed as an Administrative Analyst 3 in 2018. While A.O. asserts on appeal that the determination letter was not accurate and there was a cover-up and an abuse of power, among other statements, he has not provided one scintilla of evidence that any actions taken by F.K., G.Z., human resources, the appointing authority, or any other co-worker, were based on his 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 A.O. 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 23<sup>RD</sup> DAY OF MARCH, 2022



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