



**STATE OF NEW JERSEY**

In the Matter of S.Y-G., Department  
of Banking and Insurance

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

CSC Docket No. 2022-2993

Discrimination Appeal

**ISSUED: AUGUST 3, 2022 (SLK)**

S.Y-G., an Investigator 2, Real Estate Commission (Investigator 2) with the Department of Banking and Insurance, appeals the decision of an Assistant Insurance Commissioner, which was unable to substantiate some of 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, S.Y-G., who is female, alleged that A.R., a male Executive Director, discriminated against her based on her gender. S.Y-G. alleged that A.R. treated women less favorable than men, A.R. denied her a promotion to Investigator 1, Real Estate Commission (Investigator 1) even though she was the first ranked candidate and had the most seniority on the promotional eligible list in question, and A.R. retaliated against her for filing this complaint by not announcing a second Investigator 1 vacancy. The investigation found that A.R. did treat women less favorable than men and he would be subjected to appropriate administrative action. However, the investigation was unable to substantiate the allegations specific to her as the investigation found that there were legitimate business reasons for appointing R.S., who is male, to the Investigator 1 position, and there were legitimate business reasons for the delay in filling the second Investigator 1 vacancy.

On appeal, S.Y-G. asserts that A.R. expressed to her prior supervisor, who is male and now retired, that women should not be considered for Investigator positions, and there can be now doubt, based on the evidence, that she was not considered for

the subject Investigator 1 promotion because she is a woman. She complains that although her prior supervisor was available to be interviewed by phone, the Equal Employment Office (EEO) never contacted him or interviewed a single male Investigator.

S.Y-G. presents that she was hired in August 2006 and promoted to Investigator 2 in January 2012. Currently, L.G., a female of Supervisor of Investigations, is her direct supervisor, and she is indirectly supervised by A.R. She indicates that R.S. was hired in March 2012 as an Investigator 3, Real Estate Commission (Investigator 3) and promoted to Investigator 2 in April 2016. Therefore, he has six less years of overall seniority and four less years of experience as an Investigator 2. S.Y-G. states that she has been seeking to be promoted to Investigator 1 since February 2016 and L.G. advised her in September 2017 that she was next in line to be promoted. She emphasizes that she was the first ranked candidate for the subject promotional eligible list based on her test score and experience. Further, S.Y-G. indicates that R.S. was originally the fifth ranked eligible who then got bumped up to third-ranked as others left or retired. She asserts that in early 2020, due to a pending disciplinary matter, R.S. was stripped of his State vehicle and not permitted to investigate cases, and that matter is still open, while she has no disciplinary history. S.Y-G. presents that in December 2020, she was interviewed by L.G. and A.R. for an Investigator 1 position; however, she states that the interview only lasted for five to 10 minutes. She indicates that when she followed-up with L.G., she advised that S.Y-G. should not worry as the interview was simply a formality. After multiple follow-ups, she learned in a group email that she was not promoted. Further, when discussing the matter with L.G., she claims that L.G. indicated that the decision was made without her input. Also, while L.G. indicated that she would discuss S.Y-G.'s claim that she was not promoted because she was a woman with A.R., she states that A.R. never discussed her claim with her. Additionally, she presents that while L.G. advised that there was a second Investigator 1 position that needed to be filled, she has not been placed in this position.

S.Y-G. asserts that A.R. has a history of discriminating against women as he stated that "females aren't real investigators" and often yells at women. She highlights her college degree, real estate license, and supervisory experience prior to State service and notes that the appointing authority has not indicated whether her qualifications were considered. Instead, S.Y-G. claims that the appointing authority claims that R.S.'s previous experience as a Police Officer is somehow a higher qualification compared to her greater experience with it. Further, she states that the appointing authority clings to a phantom argument that A.R. was "directed" not to consider R.S.'s pending discipline, which removed him from actively investigating and closing cases; yet it has not pointed to any policy that would require this. Moreover, S.Y-G. argues that the appointing authority's actions defy logic as it states that the number one reason R.S. was chosen was his ability to investigate and close cases, while at the time of the interview, he had not closed a case in nine months.

Additionally, she contends that A.R. has manipulated statistics as she has a higher number of enforced cases than R.S. since the time R.S. was hired as she has closed and enforced 530 cases while he has only closed and enforced 517 cases since that time. Also, S.Y-G. indicates that these statistics do not include cases which she closed for another Investigator who was on leave.

Concerning her retaliation claim, S.Y-G. presents that when she spoke to L.G. after she was not promoted, L.G. advised that there was another appointment which S.Y-G. should get, and S.Y-G. expressed that she should not have to wait. However, she asserts that as of the time of the appeal, new Investigator Trainees keep getting hired while there is still only one Investigator 1 to supervise them. S.Y-G. requests a retroactive appointment to Investigator 1, effective May 8, 2021, with differential back pay. She also requests emotional distress damages, management training regarding discrimination and retaliation, appropriate discipline for A.R., and to no longer report to A.R.

In response, the appointing authority presents that six witnesses, including L.G. and five of her co-workers, were interviewed as part of the investigation. It asserts that S.Y-G. failed to meet her burden of proof as required under the State Policy. Additionally, the investigation found that none of the witnesses corroborated A.R.'s alleged statement that "women aren't real investigators." Instead, the investigation revealed that A.R. identified certain investigators who "aren't real investigators" and none of the witnesses stated that A.R. made that statement about S.Y-G. It asserts that S.Y-G.'s statement that no male Investigators were interviewed is false. Further, the appointing authority presents that contrary to S.Y-G.'s belief, L.G. discussed the candidates with A.R. and the choice was narrowed down to S.Y-G. and R.S. Additionally, L.G. advised A.R. that R.S. interviewed strongly and had a plan to supervise, and L.G. stated to A.R. that she was fine with either candidate and left the decision up to A.R. Also, the investigation did not substantiate S.Y-G.'s claim that R.S. had been disciplined and prohibited from working on his investigations for a year as R.S. was not disciplined and was assigned desk duty pending the outcome of the discipline investigation.

Regarding the current vacancy, the appointing authority notes that the mere fact that a vacancy exists does not establish that the vacancy exists to retaliate against her. It states that S.Y-G. indicated that she was told about the second vacancy in June 2021 and she filed her complaint on July 26, 2021. Also, the appointing authority sent A.R. an acknowledgement of the complaint in November 2021. The appointing authority highlights that five months passed before A.R. had any knowledge of S.Y-G.'s complaint and it had been almost one-year since S.Y-G. interviewed for the promotion. Therefore, the appointing argues that it is illogical to conclude that A.R. retaliated against her due to the State Policy complaint. It emphasizes that the appointing authority has approximately 120 vacancies, which includes high-level positions, which it is working on to fill.

The appointing authority emphasizes that it interviewed witnesses identified by S.Y-G. and individuals it believed had useful knowledge. It highlights that 500 pages of documents were reviewed. The appointing authority summarizes that the investigation revealed that R.S. was promoted because he quickly closes cases, had a very thorough work product, and interviewed strongly with a plan on how he would supervise. It notes that witnesses testified that they were not surprised R.S. was promoted as he is competent, professional, polite, has great leadership and supervisory skills, and is one of the more thorough investigators. The appointing authority indicates that one witness testified that R.S. goes above and beyond on his reports, assisted in training her, took her out on her first case, and showed her how to complete an investigation.

## 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 gender will not be tolerated.

*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(h)2* 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 the subject of other retaliation. Failing to promote an employee or select an employee for an advancement is an example of a prohibited actions taken against an employee because the employee has engaged in activity protected by this subsection.

*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).

Initially, it is noted that the Commission does not award emotional distress damages.

In this matter, S.Y-G. claims that A.R. did not promote her to an Investigator 1 position because she is female. She also claims that A.R. did not fill a second Investigator 1 position in retaliation for her filing a gender discrimination complaint against him. She highlights that she was the first ranked candidate, and she had more experience with the appointing authority and more enforced cases than R.S., the appointed male candidate. She also claims that a prior male supervisor could testify that A.R. would not consider her for the promotion because she is female and complained that neither her former supervisor or any other male Investigators were interviewed. Additionally, S.Y-G. claimed that her direct supervisor, L.G., was not consulted in the decision by A.R. as further evidence.

However, while the investigation revealed that A.R. treated women less favorably than men, there was no evidence to support S.Y-G.'s claim that she was not promoted to Investigator 1 because she was a woman. Instead, the investigation revealed that R.S. was promoted for legitimate business reasons because he quickly closes cases, had a very thorough work product, and interviewed strongly with a plan on how he would supervise. Further, witnesses, including female witnesses, corroborated that R.S. was a deserving candidate. Additionally, contrary to S.Y-G.'s belief that L.G., her direct supervisor who is female, did not consult with A.R. regarding the decision, L.G. indicated that she did consult with A.R. and was fine with either S.Y-G. or R.S. being promoted. Moreover, S.Y-G.'s claim that no male Investigators were interviewed was untrue and she has not presented any specific current State employee witnesses who were not interviewed by the EEO. Additionally, there is nothing in the record to suggest that S.Y-G.'s prior male supervisor, who is now retired and, therefore no longer under the EEO's jurisdiction, had any knowledge or input regarding the subject promotion. Further, S.Y-G. has not submitted one scintilla of evidence, such as statements from L.G., her prior male supervisor, or any another witness that confirms that she was not promoted because she was female, and she has the burden of proof. Mere speculation, without evidence, is insufficient to support a State Policy violation. *See In the Matter of T.J.* (CSC, decided December 7, 2016). Also, while S.Y-G. may disagree that R.S. was the best candidate, 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). Finally, even assuming *arguendo* that she was the best candidate, under the "Rule of Three<sup>1</sup>," the appointing authority had the right to appoint R.S. as it has provided legitimate business reasons as to why it made its decision, and S.Y-G. has not provided evidence that confirms that the decision was based on illegal or invidious motivations. *See In the Matter of Michael Cervino* (MSB, decided June 9, 2004).

---

<sup>1</sup> See *N.J.A.C.* 4A:4-4.8(a)3.

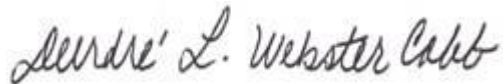
Concerning the alleged retaliation, the record indicates that it was almost one year after S.Y-G. interviewed for the promotion and approximately five months after she filed her complaint, when A.R. first learned about S.Y-G.'s State Policy complaint against him. Additionally, the appointing authority indicated that it was working though filling approximately 120 vacancies. As such, there is no evidence in the record that A.R. retaliated S.Y-G. for filing her State Policy complaint against him by refusing to fill the vacant Investigator 1 position that would presumably be filled by S.Y-G.

**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 3<sup>RD</sup> DAY OF AUGUST 2022



---

Deirdre L. Webster Cobb  
Chairperson  
Civil Service Commission

Inquiries  
and  
Correspondence

Nicholas F. Angiulo  
Director  
Division of Appeals and Regulatory Affairs  
Civil Service Commission  
Written Record Appeals Unit  
P.O. Box 312  
Trenton, New Jersey 08625-0312

c: S.Y-G.  
Kimberly G. Williams, Esq.  
Division of EEO/AA  
Records Center