



STATE OF NEW JERSEY

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

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

CSC Docket No. 2022-3066

Discrimination Appeal

ISSUED: August 24, 2022 (SLK)

A.M., a Physician Specialist 1 with the Hunterdon Developmental Center (HDC), Department of Human Services, appeals the decision of an Assistant Commissioner, which was unable to substantiate that he was subject to discrimination and retaliation in violation of the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy).

By way of background, A.M., who is male, alleged (Allegation 1) that E.H., a female Chief Executive Officer, Care Facility¹, subjected him to a hostile work environment and harassment at the Morning Rounds meetings because of his national origin, gender, age, religion and prior Equal Employment Opportunity (EEO) complaints against her. The investigation was unable to substantiate this allegation, as it found concerning the January 25, 2021, Morning Rounds meeting, that A.M. was hostile towards E.H., there was insufficient evidence to find that E.H.'s behavior towards A.M. at that meeting was based on discrimination due to any protected category or retaliation, and E.H. denied the allegations. A.M. also alleged (Allegation 2) that S.F., a female Assistant Chief Executive Officer, Care Facility, was hostile towards him at the Morning Rounds meetings due to discrimination and retaliation. The investigation was unable to substantiate this allegation as there was no witness corroboration and S.F. denied the allegations.

¹ Personnel records indicate that E.H. retired on April 30, 2022.

A.M. alleged (Allegation 3) that E.H. used A.C., a female Physician Specialist 1², as an instrument of retaliation against him. The investigation was unable to substantiate this claim as there was insufficient evidence to suggest that E.H. influenced A.C.'s behavior towards A.M. Further, although A.C. reported to E.H. in an administrative capacity while reporting to A.M. in a clinical capacity, E.H. was not required to separate A.C. and A.M. Additionally, although A.C. filed a March 15, 2021, retaliation complaint against A.M. and F.L., a female Director of Nursing Services 1, Developmental Disabilities, there was no evidence that E.H. influenced A.C. to file the complaint. A.M. alleged (Allegation 4) that E.H. denied A.M.'s and J.P.'s, a female Physician Specialist 1, requests to take time off during the 2021 holiday season to retaliate against him. The investigation was unable to substantiate the allegation as E.H. demonstrated legitimate, non-discriminatory reasons for the denials by referring to Administrative Procedure No. 31 and she demonstrated that she applied the policy equally to other employees requesting time off when it compromised supervisory coverage. Also, J.P. indicated that this was the first time that she and A.M. requested taking the same days off.

A.M. alleged (Allegation 5) that E.H. retaliated against him by influencing N.D., a female Program Assistant, Division of Developmental Disabilities, and R.C., a male Program Assistant, Division of Developmental Disabilities, to demote A.M.'s son from Habilitation Plan Coordinator (HPC) to Behavioral Support Technician (BST). The investigation was unable to substantiate this claim as A.M. stated that he was unaware of his son's performance, but it was retaliation due to the timing, as it occurred shortly after A.M. was interviewed for E.H.'s Workplace Violence complaint against him. Also, N.D. and R.C. denied any involvement with E.H. and any awareness of A.M.'s prior EEO complaints. While N.D. and R.C. acknowledged that they, along with human resources, initiated A.M.'s son's demotion, they denied it was done to retaliate against A.M. for his prior EEO complaints and there was insufficient evidence to dispute N.D.'s and R.C.'s charge that A.M.'s son's performance was unsatisfactory. A.M. alleged (Allegation 6) that Y.P., a female Assistant Supervisor of Professional Residential Services, Developmental Disabilities, was influenced by E.H. to report A.M.'s son for sleeping on duty to retaliate against A.M. The investigation was unable to substantiate the allegation as while Y.P. admitted that she reported A.M.'s son, she denied that she was influenced by E.H. or that it was done in retaliation. Also, E.H. denied any involvement in this incident, and the incident was reported to G.K., a male Habilitation Plan Coordinator.

A.M. alleged (Allegation 7) that E.H. and the HDC Administration coerced him to discipline a subordinate in retaliation. The investigation was unable to substantiate this allegation as although A.M. issued a "memo of conversation" to his subordinate as a form of corrective action, the subordinate was not disciplined. Further, January 31, 2020, and February 2020 emails showed that this incident

² Personnel records indicate that A.C. separated from employment on April 30, 2021.

occurred before A.M. filed his complaint against E.H. regarding COVID pay. A.M. alleged (Allegation 8) that E.H. and HDC Administration contacted A.M.'s subordinate, F.L., instead of him concerning consultation on clinical issues and representing HDC when the Department of Health (DOH) conducted its inspection to retaliate against him. The investigation was unable to substantiate this allegation as F.L. denied being approached by E.H. or S.F. regarding DOH visits as she only communicated with T.G., a female Administrative Assistant 2, or J.R., a female Secretarial Assistant 2, Non-Stenographic, from the HDC Office of Administration, and there was no evidence that E.H. or S.F. orchestrated this arrangement.

A.M. alleged (Allegation 9) that E.H. asked him to provide additional justification for a Performance Assessment Review (PAR) for one of his subordinates in retaliation. The investigation was unable to substantiate the allegation as A.M. was unable to provide any similarly situated employees regarding this incident and, while E.H. did not recall the incident, she denied that she would do so in retaliation. A.M. alleged (Allegation 10) that E.H. "inappropriately" subjected one of his subordinates for a Peer Review in retaliation. The investigation was unable to substantiate the allegation as E.H. and S.F. denied initiating the Peer Review as retaliation, stated that it was requested to be conducted by the Central Office, and there was no evidence to suggest that the Peer Review was initiated as an act of retaliation.

A.M. alleged (Allegation 11) that I.G., a female Quality Assurance Coordinator, at the behest of E.H., sought out and harassed A.M. and his secretary in retaliation. The investigation was unable to substantiate the allegation as there was no evidence to suggest that I.G. sought A.M. out to write a statement regarding a treatment issue involving a client as an act or retaliation as defined under the EEO policy. During A.M.'s secretary's interview, she denied feeling intimidated by I.G. or that I.G. displayed any malice by telling her to not let A.M. leave the building. A.M. alleged (Allegation 12) that D.S., a female Manager 2, Human Resources, ignored his inquiries concerning the status of contracted physicians being placed in permanent titles in retaliation. The investigation was unable to substantiate the allegation as there was no evidence that D.S.'s lack of responses to A.M.'s emails was retaliation as defined under the EEO policy. Also, E.H. denied that she had any involvement regarding D.S.'s decision to not respond to A.M.'s emails.

On appeal, A.M. asserts that there were many inaccuracies in the determination letter. He states that the retaliation against him started on or before November 2020 and not January 25, 2021, as indicated in Allegation 1. He submits documentation to show that he filed a retaliation complaint against E.H. long before the January 25, 2021, incident. Concerning Allegation 3, A.C. filed not only one complaint against him, but multiple complaints. He states that he asked to no longer be her supervisor because the way that he was supposed to supervise her posed a danger to client care. However, A.M. indicates that his requests were ignored until

the EEO asked the Administration to reassign A.C.'s supervision, and he submits documentation to support his point. He contends that Allegation 4 is not accurate as he provided evidence that many times he and his assistant took off at the same time and it was only after E.H. started retaliating against him were such requests denied. He submits documentation to show that other physicians covered for him and his assistant when they were both away and this only became a concern when E.H. started retaliating against him. A.M. states that Allegation 5 is not accurate as he was aware of his son's performance and his performance was at least average, there were no complaints against him during the morning meetings, and other HPCs who were performing at a lower level than his son were not demoted. Also, Y.P. did not report his son to G.K. since he is not his son's supervisor. Instead, Y.P. asked G.K. to be a witness that his son was sleeping, but G.K. indicated that his son was not sleeping.

A.M. indicates that Allegation 8 is not accurate as F.L. indicated to him that T.G. and J.R. were told by their supervisors to contact F.L. to meet the DOH surveyors. F.L. refused to do so alone and asked A.M. to attend. He does not believe that T.G. and J.R. have the authority to make such a decision independently. A.M. states that Allegation 9 is not accurate as he provided the investigator a copy of the PARs with a handwritten note from E.H. asking for justification for the rating. However, E.H. signed the same PAR and many other PARs without justification in the past and she only asked for justification after she started retaliating against him. A.M. contends that Allegation 12 is not accurate as not only did D.S. stop responding to his email during the retaliation period, but E.H. was copied on these emails. He states that the lack of responses to his emails hindered his ability to perform his job effectively. He submits documentation to show that his emails to D.S. were ignored.

A.M. states that a review of the determination indicates that the investigation was not thorough. He asserts that denials of discrimination by the ones who committed the discriminatory acts do not demonstrate a thorough investigation as others should have been questioned. He asks were there others who were familiar with his son's performance who were asked about it. A.M. reiterates that it is not believable that T.G. and J.R. had the authority to invite F.L. to a meeting and G.K. was not his son's supervisor. Therefore, he believes that it is self-evident that he and his son have been targeted.

A.M. states that the investigator failed to address a significant concern which was in his email to him. He indicates that there was another incident where Y.P., R.C., and H.K., a female Cottage Training Supervisor, targeted his son. He is requesting that this allegation be thoroughly investigated. A.M. submits documentation to show that he informed the investigator about this incident. He also indicates that the investigator ignored another issue that he raised regarding Y.P. contributing to the dismissal of J.P. and his grievance that was two hours after attending a meeting between himself and J.P. as a union representative. He submits

documentation to demonstrate that the investigator was informed about this issue. A.M. presents that the investigator did not investigate a training request that he approved on behalf of Dr. F.³ and sent to the Chief Executive Officer (CEO) for approval which was denied as the CEO stated that the training was not relevant despite the fact that the same doctor went to the same training multiple times in the past and it had been approved for this doctor and other doctors with no questions prior to E.H. retaliating against him. He indicates that E.H. denied the request, but S.F. approved it.

As a remedy, A.M. requests that the Administration be mindful of his position as Medical Director and go through the chain of command when reaching out to his subordinates and not bypass him on communication to his subordinates. Additionally, he states that the Administration should not go against him in meetings, and if there are any disagreements, the Administration should discuss the matter with him privately. A.M. indicates that as the Medical Director, he should be involved in all aspects of clinical care, including administrative decisions regarding clinical care, and it should not just be the “Central Office wants it this way” without consulting him. He requests that his emails be responded to in a timely manner. A.M. asserts that the CEO filed a false violence in the workplace complaint which was done in retaliation and he requests that mentions of this claim be removed from his personnel file. He requests that J.P. be offered to get back into her title and he be able to take time off even when she is off, as long as there is appropriate coverage. A.M. requests that all records relating to his son’s demotion and the unverified reports of him sleeping on the job be removed from his son’s personnel file.

In reply, by way of background, the appointing authority presents that A.M. filed a complaint of ethnic and religious discrimination against E.H. on October 28, 2020, accusing her of denying him COVID emergency pay because he is Arabic and Islamic. Additionally, A.C. filed an age and sex discrimination complaint and retaliation against A.M. on September 1, 2020, alleging that A.M., her supervisor, used F.L. to scrutinize everything she does to undermine, harass, and target her. A.C. alleged that F.L.’s actions were done to aid A.M.’s efforts to retaliate against A.C. for her filing an Equal Employment Opportunity Commission (EEOC) complaint against him. Also, on March 15, 2021, A.C. filed a complaint against A.M. and F.L. stating that they retaliated against her by orchestrating that J.L., an Assistant Director of Nursing, file a Workplace Violence complaint against A.C. She indicated that this complaint was in retaliation for a prior complaint she filed with the EEOC on September 2018, which was in reference to an April 23, 2018, gender discrimination and retaliation complaint against A.M who was her direct supervisor at the time. None of the allegations in any matters were substantiated. Further, the EEO was in contact with A.M.’s son after he was demoted, and A.M.’s son indicated that he did not believe that N.D. and R.C. discriminated against him based on a protected category. On May 25, 2022, A.M. filed an EEO complaint alleging

³ A.M. did not provide Dr. F.’s first name.

discrimination based on retaliation against J.T., a Training Technician 1, which is currently being investigated. Also, during the investigation for the subject complaint, A.M. indicated that he thought he was discriminated against because he was the only Arab Muslim male employee in management and that he was born in Jordan.

Regarding the January 25, 2021 meeting (Allegation 1), the investigation revealed that one witness believed that E.H. was hostile to A.M., but the witness could not confirm the motivation for the hostility. Additionally, the other witnesses did not corroborate that E.H. was hostile towards A.M. However, witnesses corroborated that A.M. was hostile towards E.H. at the meeting. E.H. also denied the allegations. As there was insufficient evidence that E.H.'s behavior towards A.M. at the January 25, 2021, Morning Rounds or any other meeting was based on discrimination or retaliation, the allegation was unsubstantiated. Similarly, Allegation 2 was unsubstantiated as there no witnesses who corroborated that S.F. targeted A.M. with hostile treatment during Morning Rounds based on discrimination and retaliation.

Concerning Allegation 3, the appointing authority presents that there was insufficient evidence to suggest that E.H. influenced A.C.'s behavior toward A.M. Although there was no dispute that A.C. was reporting to E.H. in an administrative capacity while she still reported to A.M. in a clinical capacity, E.H. was not required to separate both parties on the job. Also, while A.C. filed a complaint against A.M. and F.L. on March 15, 2021, there was insufficient evidence to suggest that E.H. influenced A.C. to file this complaint as retaliation against A.M. The investigation also could not substantiate Allegation 4 where A.M. alleged that E.H. denied his and J.P.'s request to take time off during the 2021 Christmas Season in retaliation as E.H. demonstrated that these denials were based on legitimate non-discriminatory reasons under Administrative Procedure No. 31 and she also showed that the policy was applied equally to other employees when requesting time off compromised supervisory coverage. J.P. acknowledged that, in the past, she and A.M. had not requested time off for the same days and here, they both requested the same days.

The appointing authority presents that A.M. alleged (Allegation 5) that E.H. influenced N.D. and R.C. to demote A.M.'s son in retaliation for A.M.'s prior EEO complaints against E.H. However, the investigation revealed that N.D. and R.C. denied involvement with E.H. and were unaware of A.M.'s EEO complaints against her. The investigation found that there was insufficient evidence that A.M.'s son's demotion was not based on job performance as N.D. and R.C. charged. Also, Y.P. denied reporting A.M.'s son for sleeping on duty as an act of retaliation (Allegation 6) as she denied she was influenced by E.H. and there was no evidence to show that E.H. was involved. Further, contrary to A.M.'s allegation, the investigation disclosed that Y.P. reported this to G.K. and there was no evidence to show that G.K. was used as a witness by Y.P. G.K. denied witnessing A.M.'s son asleep on the job.

The appointing authority indicates that A.M. alleged that he was coerced by E.H. and the HDC administration to discipline a subordinate as an act of retaliation (Allegation 7). However, although A.M. issued a "Memo of Conversation," the investigation revealed that the subordinate was not disciplined. Further, emails showed that this issue was well before A.M. complained against E.H. regarding COVID pay. Regarding the allegation (Allegation 8) that E.H. and HDC Administration contacted F.L. and not A.M. concerning consultation on clinical issues and representing HDC when DOH conducted its inspection in retaliation, the investigation revealed that F.L. denied being approached by either E.H. or S.F. regarding DOH visits as she only communicated with T.G. or J.R. Therefore, there was no evidence that E.H. or S.F. orchestrated this arrangement.

The appointing authority presents that A.M. alleged (Allegation 9) that E.H. asked him to provide additional justification for a subordinate's PAR in retaliation. The investigation revealed that A.M. did not know if E.H. asked other employees to provide additional justification for PARs or just him. Further, while E.H. did not recall the incident, she denied she would do so in retaliation. It notes that providing additional justification for a PAR is not a negative employment consequence and there was no evidence that this was retaliatory. It states that A.M. alleged (Allegation 10) that E.H. inappropriately subjected one of A.M.'s subordinates for a Peer Review in retaliation. The investigation indicated that E.H. and S.F. denied initiating the Peer Review in retaliation and that it was requested to be conducted by an Assistant Commissioner in the interest of client care.

The appointing authority states that A.M. alleged (Allegation 11) that I.G., at the behest of E.H., sought out and harassed A.M. and his secretary, R.C., in retaliation. The investigation revealed that R.C. denied feeling intimidated by I.G. or that I.G. displayed any malice toward her by telling her to not let A.M. leave the building. Therefore, it did not find there was any act of retaliation. It indicates that A.M. alleged (Allegation 12) that D.S. and E.H. retaliated against him by ignoring his inquiries concerning the status of contracted physicians being placed in permanent titles. The investigation did not find any evidence to suggest that D.S.'s lack of response to A.M.'s emails was retaliation and E.H. denied any involvement in the issue.

The appointing authority asserts that A.M. has not presented any inconsistencies in the determination letter that were material and impacted the conclusions of the investigation. It states that its investigation was thorough and argues that A.M. has not met his burden of proof. The appointing authority emphasizes that there is no evidence that any employee discriminated or retaliated against A.M. and A.M.'s strained relationship with E.H. is insufficient to find a violation of the State Policy. It notes that most respondents were not even aware that A.M. had filed prior EEO complaints against E.H. Further, E.H. provided non-discriminatory reasons for her actions.

In reply, A.M. states that his original complaint of discrimination was about COVID pay which was filed in October 2020. Thereafter, he filed a retaliation complaint in November 2020 and he continued to file various retaliation complaints. However, he indicates that despite the large number of emails that he provided the investigator, the interviews did not start until December 2021. He believes that the delay in the investigation caused those who retaliated against him to be emboldened. A.M. contends that the deterioration of his relationship with management began when he took issue with being asked to discipline a subordinate. He had indicated to the investigator that he believed that there was hostility towards him as he was the only Arab Muslim male employee in management and he was born in Jordan. A.M. asserts that this hostility and discrimination led to his request for COVID pay to be denied and then the situation got worse.

Concerning the PAR justification, A.M. acknowledges that he does not know if E.H. asked others for additional information to justify PARs although he assumes that the investigator could have found out if he chose to do so. However, he highlights that E.H. had never previously asked for justification for the exact same PAR for the same employees for many previous evaluations and she only asked after the retaliation started. Regarding E.H.'s Workplace Violence complaint that she filed against A.M. on January 25, 2021, he is not aware that there was a report that recommending that both he and E.H. "make good faith efforts to act in a professional manner," that he was recommended to attend anger management training, and both he and E.H. were referred to the Employee Advisory Services (EAS) "for appropriate training on workplace civility, training on professionalism in the workplace, and training on working harmoniously, and attend training, separately, on workplace violence at this time."

Concerning the January 25, 2021, Morning Rounds, A.M. states that while he stood and stated that "I am the Medical Director," he did not shout as E.H. contends and was simply stating a fact. He presents that when he said to E.H. that she should "be careful" he was referencing his prior discrimination and retaliation complaints as she was targeting him further, and he did not storm out of the room, but walked out, because he felt extremely humiliated. A.M. presents that while E.H. claims that she gave A.M. the "utmost respect," this was not true, because no matter what he said during meetings, the response from E.H. and S.F., even before he finished his thoughts, was "Central Office will not agree to that." Regarding his being "forced" to discipline a subordinate, he reiterates that this resulted in the start of hostility and retaliation. A.M. denies that he ever said "fire me" as E.H. claims during a November 24, 2020 Morning Rounds meeting. He also denies that he ever suggested going against Department policies as E.H. claimed and, instead, suggested that E.H. bring up some of the clinical issues he raised during the CEO meetings, which he does not believe she did. Additionally, while E.H. denies that she would "validate" any recommendations that A.M. would make during Morning Rounds with subordinates,

A.M. asserts that his allegations are facts, and this did not stop until E.H. and S.F. stopped attending Morning Rounds.

A.M. states this his allegation concerning F.L. being contacted by HDC management regarding clinical issues and COVID arrangements instead of him, involved multiple incidents and not just one incident as E.H. claimed. Regarding the Peer Review allegation, as the Medical Director and supervisor and since it is a clinical, he believes that he should have been informed about it ahead of time and he sees this as another attempt to undermine his relationship with subordinates. Concerning A.M.'s emails about contracted physicians, he asserts that prior to the acts of retaliation, he always received responses to his emails and he sees that as another attempt to negatively affect his relationships with subordinates. A.M. indicates that around February or March 2021, E.H. and S.F. ceased attending Morning Rounds after the completion of the violence in the workplace investigation, which he says saved his job because, otherwise, he would have retired or taken leave due to the stress that they put him under. Regarding the DOH surveyors, A.M. indicates that during this time, the administration was out with COVID and he was the highest-ranking official at the facility. Therefore, he believes that instead of F.L. first being asked to meet with the DOH surveyors, he should have been the one asked.

Regarding his son's demotion, A.M. presents that his son's performance did not significantly deviate from any other HPC. He states that Y.P., as the union representative, attended his son's demotion meeting and she got a huge promotion shortly after his son's demotion. A.M. emphasizes that Y.P. was the one who wrote his son up for sleeping on the job and he also believes that she was instrumental in dismissing J.P.'s and his discrimination complaint for denying his leave requests. A.M. believes that it is too much of a coincidence that their complaints were dismissed just two hours after Y.P. attended their meeting regarding their grievance for Y.P. to have not been involved in its dismissal. Also, A.M. states that the investigator ignored asking G.K. if he was ever asked by Y.P. to witness his son sleeping as no one claimed that G.K. was ever called to be a witness since there was no hearing. Additionally, A.M. alleged that G.K. was instructed to put his son's schedule in the Group Book in the day area so he could be monitored. A.M. believes this was retaliation as his son was the only employee who this was done to, and A.M. asks if G.K. was ever interviewed about this. He believes that G.K.'s responses seem to be suppressed. Also, A.M. emphasizes that contrary to the appointing authority's statement, there was no meeting about this incident. Additionally, A.M.'s states that it is surprising to him that E.H., the CEO of the institution, claims that she was not aware that his son was demoted and accused of sleeping on the job. A.M. also believes that other HPCs were not put under the same scrutiny as his son and questions if the investigator asked N.D. if others were put under the same scrutiny and how others were assessed. Similarly, while R.C. denies that A.M.'s son's demotion was retaliatory, A.M. asks what is the standard of care and how is it applied to the rest of the HPCs.

A.M. asserts that D.S. ignoring his emails about contracting physicians undermined his authority and believes it was intentional. Additionally, A.M. emphasizes that he and J.P. had been allowed to take off at the same time in the past as evidenced by documentation that he submitted even if the denial was done in accordance with policy, which he believes is evidence of retaliation. A.M. presents that A.C. filed multiple complaints against him when she reported to him clinically and E.H. administratively. He indicates that her last complaint was in March 2021, well after his discrimination and retaliation complaints. He states that he repeatedly asked to stop supervising A.C. and was denied these requests until the EEO stepped in and asked the administration to make the change.

A.M. states that the inconsistencies in the investigation show that it did not go into the possibility of discrimination or retaliation. He presents that if a respondent is asked if they discriminated or retaliated and they respond "No," it is unfair that this is where the investigation stops. A.M. asserts that at minimum, the investigator should look at similar employees, similar incidences, the standards used to evaluate employees, and the potential reward for the respondents to act in this matter. He notes that a huge number of incidents were reported to the investigator and these incidents stopped after he initiated the investigation, which he believes should have raised eyebrows. A.M. asserts that the one year in delay in starting the investigation caused great stress for himself and his son. A.M. reiterates that these complaints all started after he filed discrimination and retaliation complaints after he was unfairly asked to discipline a subordinate. He states that the investigation relied solely on the responses of the respondents regarding their intent of discrimination/retaliation and their knowledge of previously filed incidents, which makes the investigation one sided and ignores impartial information. A.M. believes that the investigation suppressed information, such as the interview with G.K., that was not consistent with the general direction of the investigation. He contends that there were inconsistent or unbelievable responses such as respondents claiming that they were unaware of prior EEO complaints despite being a union representative who attended meetings regarding these complaints or the CEO not knowing about demotions of staff or staff sleeping on the job in her institution. Therefore, A.M. requests a thorough review of all the information while keeping in mind the missing information in this investigation as well as reliability of some parts of the investigation.

In further reply, the appointing authority presents the steps that it took in this matter from when it first received the complaint on January 25, 2021. It asserts that A.M.'s allegation that it did not begin the investigation until December 2021 is unfounded as the investigator communicated with A.M. throughout the investigation. The appointing authority states that the investigator needed to review A.M.'s allegations, gather documents, and conduct interviews. It indicates that the investigation took many months due to the numerous allegations that A.M. presented and the large number of witnesses and documents. The appointing authority notes

that the investigation consisted of at least 15 interviews and a review of at least 21 relevant documents.

In further response, A.M. states that he kept sending the investigator complaints and the investigator occasionally responded. While he acknowledges that the investigator briefly interviewed him on March 21, 2021, he presents that there were no other interviews until December 16, 2021. A.M. asserts that other than the occasional response to his emails, there was a nine-month gap between where no interviews or actions took place by the investigator. He contends that this delay exposed his son and himself to further retaliatory acts, which he continued to communicate to the investigator. A.M. asserts that once the investigator began the interviews, the retaliation subsided, which he believes is evidence that actions taken against him were retaliatory. He acknowledges that he did initially advise the investigator on March 12, 2021, to drop the complaints as he felt that the investigator was not interested in his complaints and he was worried about retaliation from co-workers. However, A.M. emailed the investigator to re-open the complaints on March 21, 2021, to reinstate his complaints and he feels that the nine-month gap before the interviews began shows that the investigator had no interest in his matter. He contends that the investigator's delay was not caused by his subsequent complaints, but by the investigator's delay, which caused him to be exposed to retaliatory acts, which then caused him to file more complaints.

A.M. argues that the investigation was not thorough because the investigator ignored his evidence. For example, he provided the investigator the physician rotation's list to cover J.P. and himself when they were both off at the same time and emails to show that his son was the only employee singled out in having his schedule put in the Group Book so that all employees can monitor him. A.M. believes that the samples of interviews used were chosen to justify the administration's action. For example, he believes that the interview with G.K. was misleading and suppressed and his full interview needs to be reviewed. A.M. disputes the appointing authority's characterization that there was an interpersonal conflict between E.H. and himself as the retaliation followed his initial refusal to unfairly discipline an employee, which followed denying him COVID pay which was given to all other doctors in his title. Additionally, while the appointing authority states that E.H. provided non-discriminatory reason for her actions, he indicates that all these actions were a change from previous practice and only occurred after he filed discrimination complaints. For example, A.M. questions why E.H. would deny J.P. and his vacation requests despite the fact that they were doing the exact same thing before the retaliation started and the procedure that E.H. referenced was already in place when previously they were allowed to take time off at the same time.

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 national origin, religion, age and gender will not be tolerated.

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.

N.J.A.C. 4A:7-3.1(g)1 provides, in pertinent part, that the investigations shall be conducted in a prompt, thorough, and impartial manner.

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 A.M. mainly accuses E.H. of retaliating and discriminating against him. However, personnel records indicate that E.H. retired on April 30, 2022. As such, even if A.M.'s allegations against her were substantiated, no action can be taken against her rendering most of this matter moot.

Concerning the merits, A.M. states that he believes that he was discriminated against because he is male, Arab, from Jordan, and a Muslim; however, his complaint and appeal does not specifically address these allegations. Instead, A.M. indicates that his issues started when he disagreed with having to "discipline" a subordinate by issuing a "Memo of Conversation." Thereafter, he believes that he was retaliated against by E.H. when his request for COVID pay was denied. Additionally, A.M. presents that he filed EEO complaints against E.H., and he believes that E.H. and others began to retaliate against him for his prior EEO complaints against her. Specifically, A.M. alleged that E.H. retaliated against him in variety of ways such as undermining him at Morning Rounds, using co-workers to harass him and his subordinates, denying him vacation, having the administration initially contact a subordinate to act as the representative for DOH inspections, subjecting his subordinate to a Peer Review, having the administration ignore his emails regarding contracting physicians, and having others targeting his son by wrongly accusing him of sleeping on the job and demoting him. However, the investigation, which consisted

of 15 interviews and a review of 21 documents, found that the respondents denied the allegations, there were legitimate business reasons for certain actions, and/or there were no corroborating witnesses or documentations that indicated that E.H.'s or any other employee's actions were based on discrimination or retaliation.

The record indicates that A.M. has not provided one scintilla of evidence that E.H. or anyone else discriminated or retaliated against him. A.M. has not provided one statement from a witness or one document that corroborates that the reason that E.H. or anyone else took any actions was based on A.M.'s membership in a protected class or in retaliation for his prior EEO complaints against E.H. Similarly, while A.M. complains that G.K.'s interview was "suppressed" and G.K. was not asked the right questions, A.M. has not provided a statement from G.K. that indicates that E.H. or anyone else took actions based on discrimination or retaliation. Moreover, while A.M. complains that only the respondents were interviewed, and their responses were taken at "face value," A.M. has not specifically named one potential witness who was not interviewed who would confirm that E.H. or anyone else took actions against A.M. based on discrimination or retaliation. A.M. believes that the "circumstances" of actions should be considered even if there was a justifiable explanation for actions. However, mere speculation, without evidence, is insufficient to support a State Policy violation. *See In the Matter of T.J.* (CSC, decided December 7, 2016). The record indicates that A.M. disagrees with how E.H., the HDC administration, and other employees interacted with himself and his son. However, 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). Accordingly, the Commission finds that the investigation was thorough and impartial, and A.M. has failed to meet his burden of proof.

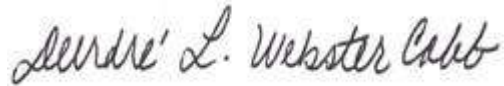
Regarding A.M.'s statements that not all allegations were investigated, A.M. can file an additional State Policy complaint with HDS for any issues that he believes were not addressed in the determination letter.

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 24TH DAY OF AUGUST, 2022



Deirdre L. Webster Cobb
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Civil Service Commission

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