



**STATE OF NEW JERSEY**

In the Matter of L.P., Department of  
Law and Public Safety

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

CSC Docket No. 2022-3232

Discrimination Appeal

**ISSUED:** October 12, 2022 (SLK)

L.P., a Sergeant with the Division of State Police, Department of Law and Public Safety, appeals the decision of a of Chief Ethics and Compliance Officer, which was unable to substantiate all his allegations of violations of the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy).

By way of background, L.P., a Hispanic male, alleged (Paragraph One) that R.P., a retired<sup>1</sup> Caucasian male Sergeant First Class, engaged in disparate treatment and retaliation. He alleged (Paragraph Two) that R.P. required A.B., an African-American female Senior Public Safety Telecommunicator, State Police, and T.B., an African-American Public Safety Telecommunicator, State Police (PST)<sup>2</sup>, to fill out Form 329 to meet with him while others could schedule a meeting with a Unit Head via email. L.P. alleged (Paragraph Three) that he reported to R.P. that there were race issues in the unit, but he failed to report it. He alleged (Paragraph Four) that R.P. told L.P. that he heard rumors that PSTs were complaining about R.D., a Hispanic and Asian male Sergeant, favoring people and R.P. said that he did not want Equal Employment Opportunity (EEO) complaints emanating from the unit and R.P. did not report the rumors to the EEO office. L.P. alleged (Paragraph Five) that R.P. engaged in race-based differential treatment when he took away A.B.'s responsibility of preparing battle sheets. He alleged (Paragraph Six) that R.P. directed O.D., a

<sup>1</sup> Personnel records indicate that R.P. retired on July 31, 2022.

<sup>2</sup> Both Senior Public Safety Telecommunicators, State Police and Public Safety Telecommunicators, State Police shall be referred to as PSTs.

Hispanic and Caucasian male Sergeant, and C.O., a Caucasian male Sergeant, to subject A.B. to differential treatment based on race by issuing her Employer Appraisal Forms (EAFs) for allegedly sleeping while on duty while Caucasians who were caught sleeping were not disciplined. L.P. alleged (Paragraph Seven) that A.B. was subjected to race-based differential treatment when he was ordered by R.P. to conduct a Performance Safety Administrative Telecommunicator Review (PSTAR) where A.B. handled a 9-1-1 call after J.B., a Caucasian female PST, was unable to handle it. L.P. alleged (Paragraph Eight) that R.P. retaliated against him in various ways for reporting and supporting allegations of discrimination against R.P. He alleged (Paragraph Nine) that O.D. violated the State Policy by referring to L.P. in negative terms based on perceived disability and sex/gender. Additionally, R.P. failed to report the matter. L.P. alleged (Paragraph 10) that O.D. retaliated against him by telling him that he should not side with PSTs against R.P. The investigation substantiated the allegations in Paragraph Nine and the matter was forwarded for appropriate corrective action. The investigation was unable to substantiate the other allegations.

On appeal, L.P. states that there were additional complaints that he made that were not addressed in the determination letter. Regarding Paragraph Two, he states that there was written information and a phone call that corroborated that R.P. reached out to PSTs by race. He states that there was no formal policy in place that required Form 329s to see R.P. and any documentation that R.P. could have provided could have been forged. He asks that the evidence that Caucasian PSTs could complain to certain Sergeants without Form 329 while African-American PSTs could not, be re-reviewed. Concerning Paragraphs Three and Four, L.P. states that he provided evidence that R.P. was pressuring Caucasian PSTs to file internal complaints against R.D. and he asks that this evidence be re-reviewed. Referring to Paragraph Five, he presents that the example he provided the EEO intake demonstrated that R.P. was ordering something and then distancing himself which supports his issue of “gaslighting<sup>3</sup>.” Concerning Paragraph Six, L.P. cannot confirm or deny whether A.B. was sleeping on-duty. However, he asserts that C.O. advised him that he felt like he was “being used” in this matter. He states that he supplied multiple phone calls which shows L.P. instructing Sergeants to “wake-up” Caucasian PSTs instead of disciplining them, which was not addressed in the determination letter. Regarding Paragraph Seven, L.P. indicates that he did not contest that he was ordered to conduct a PSTAR review of the phone call that J.B and A.B. handled. However, he states that he was given an order to focus on only one part of the call, which was derogatory for A.B., to skew the review of the phone call. He also states that the discipline was decided before the PSTAR review, which deviated from

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<sup>3</sup> Gaslighting is psychological manipulation of a person usually over an extended period of time that causes the victim to question the validity of their own thoughts, perception of reality, or memories and typically leads to confusion, loss of confidence and self-esteem, uncertainty of one's emotional or mental stability, and a dependency on the perpetrator. See <https://www.merriam-webster.com/dictionary/gaslighting>.

standards. He states that all requests for discipline went toward individuals from complainants for witnesses in this matter. Referring to Paragraph Eight, L.P. believes that for the conclusions to be reached that he was not retaliated against by R.P. in the various ways that he mentioned, the evidence must not have been reviewed. Concerning Paragraph Nine, he states that in addition to the violations that were substantiated, there were other actions by R.P. that violated the State Policy which were not addressed. Regarding Paragraph 10, L.P. asserts that the evidence submitted was not reviewed with the proper timeline. He states that incidents started with his November shift, where he was given an email warning. Shortly thereafter, there were incidents with O.D. and A.B. Subsequently, he indicates that O.D. approached him to ensure that he was on L.P.'s side, which he was resisting. Then, he states that he received written documentation from L.P. regarding the November incident and O.D. kept approaching him to be on L.P.'s side. Next, he presents that his quarterly evaluation from L.P. blamed all incidents for the unit on him. Then, he was again approached to ensure that he was not on A.B.'s side. Therefore, he presents that the evidence indicates that there was a coordinated effort to ensure that he was on R.P.'s side regarding the problems in the unit. He notes that the sexual harassment complaints that he forwarded to the EEO did not occur during his work shifts, but were reported to him after they were not properly reported during those shifts.

In the appointing authority's response, concerning L.P.'s statement that not all allegations were addressed, it indicates that it is currently reviewing additional complaints. Regarding Paragraph Two, R.P. acknowledged that when A.B. requested a meeting, this was the first time that he required that Form 329 be used to have such a meeting. However, he stated that he implemented the policy because in November 2019, multiple PSTs left the floor leaving the remaining PSTs in an unfair and dangerous position. Thereafter, he decided to implement a zero-tolerance policy for various disciplinary issues, which resulted in a sharp increase in discipline. He presented that he consulted with Labor Relations and a Manager that requiring Form 329 to be filled out before a meeting was appropriate to gather information and document what occurred. Therefore, the investigation did not establish that his actions were based on race. Concerning Paragraphs Three and Four, the EEO found that R.P. was not required to report "rumors" and "gossip" where the allegations were vague and did not have a nexus to any protected category. Specifically, the investigation revealed that A.B. reported issues to R.P. that were more about work ethic than race, which is supported by A.B.'s text which called the unit a "mess," without mentioning race. Referring to Paragraph Five, R.D. believed that R.P. took away the battle sheets responsibility from A.B. because he did not like her, but he did not believe that it was based on race. R.P. explained that he took away the responsibility because of the complaints he was receiving about her assignments. In particular, A.B. assigned one PST the busy and exhausting Newark communication terminal seven nights in a row, which he believed was "egregious." As such, the investigation found that R.P.'s actions were not based on race.

Concerning Paragraph Six where disparate treatment based on race when PSTs were found sleeping was alleged, the investigation revealed that R.P.'s treatment was not based on race as A.B. had three sleeping incidents, she was more argumentative and disrespectful than of other PSTs and her sleeping presented a significant safety issue as recordings showed that she was unresponsive to Trooper calls for an extended period, which put their safety in jeopardy. Therefore, the investigation found that her treatment was not based on race. Regarding Paragraph Seven where it was alleged that R.P. treated a Caucasian PST more favorable than A.B. regarding the review of the intake of a 9-1-1 call, the investigation revealed that the PSTAR review was ordered because the caller complained to the Attorney General's Office. Further, while R.P. may have treated the Caucasian PST more favorably than A.B., there was testimony that such treatment was based on R.P.'s dislike of A.B. and not racially motivated. Therefore, the investigation did not find that R.P.'s actions were based on race. Referring to Paragraph Eight where L.P. alleged that R.P. retaliated against him for contacting the EEO and supporting those who alleged that R.P. discriminated against them, the investigation revealed that R.P. was unaware that L.P. contacted the EEO until May 2021, which was after the alleged retaliatory actions against L.P. Further, R.P. provided documentation and reasonable explanations to support his actions against L.P. Moreover, even if some of R.P.'s actions were inappropriate, there was no evidence presented that any actions taken by R.P. against L.P. were racially motivated. Concerning Paragraph Nine, the EEO substantiated the allegations. Also, the new allegations that L.P. makes would need to be separately investigated. Regarding Paragraph 10 where L.P. alleged that O.D. retaliated against him because of his EEO complaints against R.P., O.D. denied the allegations and said that he only attempted to convey to L.P. that he should stop gossiping with PSTs. Similarly, while L.P. alleged that another Sergeant approached him to say that he should not take A.B.'s side as she was "a mess," this other Sergeant also denied attempting to dissuade L.P. from reporting allegations of discrimination. The EEO did not find any evidence that contradicted O.D. and the other Sergeant. Further, the EEO indicates that alleged adverse actions that were taken around the same time that O.D. and the other Sergeant spoke to him is insufficient to find a State Policy violation simply based on timing alone. At most, the EEO found that the evidence of retaliation was in equipoise, which is insufficient to meet the preponderance standard.

## 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 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:7-3.2(i), at the EEO/AA Officer's discretion, a prompt, thorough, and impartial investigation into the alleged harassment or discrimination will take place. In determining whether or not a thorough and impartial investigation is warranted, the EEO/AA Officer when reviewing complaints shall consider, but is not limited to considering, the following factors: the facts presented, whether the complainant articulated a sufficient nexus between the alleged conduct to a protected category as set forth in *N.J.A.C.* 4A:7-3.1(a), the time the incident(s) occurred, the time the incident was reported, and whether the complainant and/or respondent is a current State employee (regardless of when the incident occurred).

*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 L.P. mainly accuses R.P. of violating the State Policy by differential race-based treatment against A.B., and to a lesser extent T.B., failing to report discriminatory claims as required as a supervisor, ordering others to commit discriminatory acts, and retaliating against him for making EEO complaints and supporting others who made discrimination claims. However, personnel records indicate that R.P. retired on July 31, 2022. As such, even if L.P.'s allegations against R.P. were substantiated, no action can be taken against him rendering most of this matter moot.

Concerning the merits, the investigation revealed that R.P. provided documentation and explanations supporting his treatment of A.B. and R.P. Concerning some of the allegations, there was also witness testimony that confirmed that R.P.'s actions were based on legitimate business reasons. Further, while there was some testimony that R.P. may have treated A.B. unfairly, the witnesses believed that such treatment was based on R.P.'s dislike of A.B. and not due to her race. 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). Additionally, while L.P. complains that the EEO did not properly review the evidence and asks that the evidence be re-reviewed, he had the opportunity to submit evidence on appeal, but failed to submit any witness statements, documentation, or any other evidence. Mere speculation,

without evidence, is insufficient to support a State Policy violation. *See In the Matter of T.J.* (CSC, decided December 7, 2016). Moreover, even if he had, it does not appear that L.P. has any evidence that would demonstrate by a preponderance of the evidence that R.P.'s actions were based on race or retaliation. Moreover, the investigation revealed that although L.P. made numerous claims on how R.P. retaliated against him for filing an EEO complaint, the investigation revealed that R.P. did not learn about the complaint until after the alleged retaliatory acts. Finally, L.P. claims that the timeline of acts supports his allegations. However, the mere timing of alleged adverse actions taken against him and conversations that L.P. had with O.D. and another Sergeant, without more, do not support a nexus that the actions were taken in retaliation for his support of PSTs discrimination complaints against R.P. Accordingly, the EEO properly determined that there was insufficient evidence to support the alleged State Policy violations other than the ones substantiated in Paragraph Nine. Similarly, regarding the allegation that O.D. retaliated against him for supporting PSTs complaints against R.P., the investigation revealed that there was insufficient evidence to support this claim by the preponderance of evidence, and as L.P. submitted no persuasive evidence on appeal, he has not met his burden of proof.

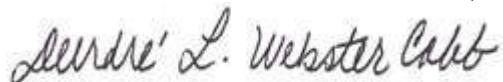
Referring to L.P.'s claim that not all of his complaints were addressed, the EEO indicates that some complaints are still under investigation. Additionally, under *N.J.A.C. 4A:7-3.2(i)*, the EEO has discretion as to whether to conduct an investigation. However, as implied under *N.J.A.C. 4A:7-3.2(i)*, any allegations against R.P. are moot as he is no longer a State employee. If L.P. has allegations against other employees that have not been addressed, he can file a separate complaint with the EEO.

### 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 12<sup>TH</sup> DAY OF OCTOBER, 2022




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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: L.P.  
Shaun Boparai  
Joanne Stipick  
Division of EEO/AA  
Records Center