



**STATE OF NEW JERSEY**

In the Matter of S.H., Department of  
Labor and Workforce Development

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

CSC Docket No. 2023-253

Discrimination Appeal

**ISSUED:** November 2, 2022 (SLK)

S.H., a provisional Employment and Training Specialist 1 (ETS1)<sup>1</sup> with the Department of Labor and Workforce Development, appeals the decision of an Assistant Commissioner, which was unable to substantiate 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.H., who is African-American, applied to an appointing authority vacancy announcement for a provisional appointment as an Administrative Analyst 3 (AA3). In response, S.H. received a July 15, 2022, notice from C.C., an African-American Manager 2, Human Resources<sup>2</sup>, stating that after reviewing all resumes, she was not selected for an interview at that time. Thereafter, S.H. filed a complaint with the Office of Diversity and Compliance (ODC) alleging that she was denied an interview in retaliation. The investigation revealed that she did not demonstrate on her resume that she met the experience requirements for the vacant position. Specifically, the position required three years of experience in the review, analysis, and evaluation of budget, organization, administrative practices, operational methods, management operations, or data processing applications, or any combination thereof, which shall have responsibility for the recommendation, planning, and/or implementation of improvement in a business or government

<sup>1</sup> The appellant's permanent title is Program Specialist 1.

<sup>2</sup> Personnel records indicate that C.C. transferred to the Department of Corrections on September 10, 2022.

agency. S.H. had submitted a resume that she had been serving as an ETS1 since March 2016 while personnel records indicated that she started in this title on April 24, 2021. Therefore, as she did not list her positions and duties as a Program Specialist Trainee and Program Specialist 1 from March 2016 to April 2021, she was only credited for her one year and one months of service as an EST1 and was determined to lack the three years of required experience. The determination letter indicated that if S.H. had listed all titles and duties on her resume, she may have received credit for those positions. The letter also noted that the reviewer did not find S.H.'s Account Reconciliation Specialist (July 2014 to March 2016) and Senior Reimbursement Specialist (August 2012 to July 2014) experience as applicable. Further, the investigation revealed that when S.H. was determined to be performing the duties as an EST1 while serving in Program Specialist titles, after a classification review by this agency, that determination was only retroactive to April 24, 2021. Therefore, the investigation indicated that the duties on S.H.'s resume could not be attributed to her since 2016. It also noted that her Master's degree in Health Administration was not in one of the applicable areas to substitute for one year of experience.

On appeal, S.H. presents that she was denied an interview for a job that she is currently performing, and the determination letter indicated that this denial was based on a lack of experience. She believes that this justification is only being presented in response to her complaint that C.C. retaliated against her because of the numerous complaints that she has made against the appointing authority alleging disparate treatment against minority employees when it completely ignored Civil Service policies when promoting employees, reviewing qualifications, and by substantially raising the salaries of Caucasian employees compared to minority employees. S.H. states that C.C. is also privy to a lawsuit that includes a former Labor Relations Administrator as she has been copied on emails regarding that matter.

S.H. indicates that she submitted several requests to have these matters investigated, but the appointing authority never investigated or determined these matters. She notes that she applied for the subject vacancy posting on April 26, 2022, and she received a July 15, 2022, letter advising that because so many letters were received, she was not selected from the resume pool. S.H. presents that this letter did not advise that she did not possess the required experience, she was not qualified or because she did not provide all her titles on her resume. Instead, the letter stated that she was not selected because too many resumes were received. Additionally, on July 26, 2022, she indicates that she received another letter with additional reasons why she was not selected. However, S.H. asserts that these reasons are not valid and believes that they were only raised because she filed an Equal Employment Opportunity (EEO) complaint in response to her non-selection to interview and she presented former complaints not addressed by the Labor Relations Unit or the ODC.

S.H. notes that she was provisionally appointed as an ETS1 retroactive to April 11, 2021, after a classification review and she was a Program Specialist Trainee/Program Specialist 1 from March 2016 to April 2020. While she acknowledges that she should have listed all four titles on her resume<sup>3</sup>, she states that she did not do so because she has been performing her current duties out-of-title, which are more advanced and complex than Program Specialist duties, since 2016. S.H. indicates that she submitted several grievances and complaints that were held and never addressed by the Labor Relations Unit. She asserts that her out-of-title duties have drastically increased and become more complex since 2016 as she trains, assigns, and oversees new employees, which is a supervisory role. S.H. indicates that in the appointing authority's determination letter, it did not credit her for her Employment and Training Specialist 2 (ETS2) duties where she was provisionally appointed to that title retroactive to April 2020. She states that this provides her with two years and one month of experience based on her ETS1 and ETS2 experiences. S.H. also provides that her Master's in Health Administration gives her an additional year of experience. Therefore, she believes that she has more than the three years of required experience. S.H. asserts that she has been performing AA3 duties at the request of the hiring manager since July 2021. She states that the hiring manager inquired why she was declined an interview, but her inquiry was not answered, which she presents as another case of her complaints remaining unresolved. S.H. provides that she submitted several examples to Labor Relations of how Civil Service rules are disregarded for some employees, but minority employees are not afforded the same opportunities. She presents that she has actual experience and surpasses the education requirement while the prior employee who held the position did not have a college degree, which is required.

S.H. indicates that she has six years of experience performing the required duties. She presents that her previous supervisor requested to Human Resources that she be promoted on at least three occasions as she was performing out-of-title duties. This led to the classification review of her position and her provisional appointments as an ETS2 in April 2020 and ETS1 in April 2021. S.H. believes that her experience has not been calculated correctly in the determination letter and the letter's reference to personnel records is inaccurate because her titles omitted from her resume were listed in personnel records. She states that even after she submitted her personnel record she was not credited for her experience by the appointing authority and it refuses to acknowledge the discrepancies in the determination letter. She submits emails, interview denial letters, and the determination letter to demonstrate the alleged disparate treatment of minority employees.

In response, the appointing authority presents that while S.H. submitted a resume indicating that she has been an ETS1 since March 2016, personnel records

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<sup>3</sup> Official personnel records indicate that the appellant was provisionally appointed as an ETS1 in April 2021, provisionally appointed as an ETS2 from April 2020 to April 2021, a Program Specialist 1 from March 2017 to April 2020, and a Program Specialist Trainee from March 2016 to March 2017.

indicate that she has only been in this title since April 24, 2021. Therefore, she was credited for one year and one month of the three years of required experience. It explains that since S.H. did not specifically list all her titles and the duties she performed for each title, the Personnel Assistant who reviewed her resume could not determine what job duties were associated with her prior titles and only credited her back to when she started as an ETS1. Further, a review of S.H.'s prior experience as an Account Reconciliation Specialist from July 2014 to March 2016 and Senior Reimbursement Specialist from August 2012 to July 2014 does not indicate that this was applicable experience. The appointing authority notes that the resume that S.H. submits on appeal was not the same resume that she submitted in response to the subject vacancy posting and contends that her revised resume should not be considered in this matter.

The appointing authority indicates that S.H.'s Master's degree in Health Administration did not qualify her to substitute her education for one year of experience as the only applicable Master's degrees, per the announcement, were Public Administration, Business Administration, Finance, Economics, or Accounting. Therefore, she needed three years of applicable experience, which she did not possess based on a review of her resume.

The appointing authority asserts that S.H.'s prior successful classification appeals were immaterial to Human Resources' determination that her resume did not reflect that she possessed the required experience. It presents that the reclassification of her position to EST1 only provisionally appointed her in that position retroactive to April 24, 2021, and not 2016 as she indicated on her resume. The appointing authority emphasizes that it was S.H.'s responsibility to submit an accurate resume which would allow Human Resources to properly evaluate her experience so that it can make decisions without being unfair and biased.

The appointing authority states that the previous employee who held the position did not need to have the required education because the job specification for the subject title allows for experience to substitute for education. Therefore, it argues that there is no evidence that Human Resources' determinations were pretextual and not applied consistently in response to the subject job vacancy or prior appointments. Additionally, it presents that S.H. received a standard letter that was sent to all applicants who were not interviewed for the subject vacancy. The appointing authority explains that a standard letter was sent for efficiency reasons to prevent Human Resources from having the burden of explaining to each applicant why they were not chosen for an interview. Therefore, the appointing authority asserts the letter is not evidence that the determination that she was not qualified for the subject vacancy was a pretextual excuse after she filed her complaint.

## 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(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:7-3.2(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, S.H. applied for a vacancy posting for a position as an AA3. It is noted that vacancy postings that are initiated by the appointing authority are not monitored by this agency. Such postings are used by the appointing authority to generate a list of interested individuals to fill vacant positions, most often with a provisional appointee.

The requirements for the subject vacancy mirrored the Civil Service job specification for AA3. Specifically, the education requirements were a Bachelor's degree. The experience requirements three years of experience involving the review, analysis, and evaluation of budget, organization, administrative practices, operational methods, management operations, or data processing applications, or any combination thereof, which shall have included responsibility for the recommendation, planning, and/or implementation of improvements in a business or government agency. Applicants who did not possess the required education could have substituted additional experience as indicated on a year-for-year basis with 30 semester hour credits being equal to one year of experience. Additionally, a Master's degree in Public Administration, Business Administration, Economics, Finance, or Accounting could have substituted for one year of indicated experience.

The record indicates that S.H. submitted a resume that indicated that she possessed a Bachelor's degree and a Master's degree in Health Administration. She also indicated that she was a EST1 from March 2016 to the vacancy announcement May 9, 2022, closing date. Additionally, she presented non-applicable experience outside of State service. Personnel records indicate that she was an ETS1 from April 2021 to the closing date, an ETS2 from April 2020 to April 2021, a Program Specialist

1 from March 2017 to April 2020, and a Program Specialist Trainee from March 2016 to March 2017.

The appointing authority explains that because S.H. did not separately list her Civil Service title since March 2016 and listed all of her job duties under ETS1, it could only credit her for one year and one month of experience based on when she was provisionally appointed as an ETS1 in April 2021 to the May 2022 closing date and it could not evaluate her State service experience from March 2016 to April 2021. While this agency does not monitor vacancy announcements, it is noted that how the appointing authority reviewed S.H.'s application is consistent with how this agency reviews an application for a Civil Service examination when determining eligibility. Candidates are responsible for accurately indicating their Civil Service titles, the dates that they served in these titles, and describing their specific duties that they performed in these titles and those that fail to do so risk being determined ineligible even if they do potentially possess the required experience. There is no obligation under Civil Service laws or rule for an appointing authority to correct a candidate's resume based on personnel records and there is no requirement for the appointing authority to seek clarification from a candidate who submitted an inaccurate resume for a vacancy posting. As S.H. failed to submit an accurate resume, the record indicates that the appointing authority had a legitimate business reason for only crediting her for her ETS1 experience dating back to April 2021. Further, as Health Administration is not listed in the vacancy posting as one of the applicable Master's degrees, the appointing authority properly did not substitute her Master's degree for experience.

Concerning the appellant's assertion that she has performed out-of-title duties since March 2016, it is noted that in its April 4, 2018 decision, the Commission denied her appeal to have her position reclassified to EST1 or EST2. Therefore, the record does not indicate that she was performing out-of-title duties since March 2016. Instead, based on her subsequent successful classification reviews, the record indicates that she was performing out-of-title EST1 or EST2 duties retroactive only to April 2020. Referring to S.H.'s belief that the appointing authority was substantially raising the salaries of Caucasian employees compared to minority employees, S.H. filed an appeal believing that her retroactive salaries for EST1 or EST2 were improperly calculated. However, after reviewing her claim, this agency informed her that her salaries were properly determined based on Civil Service rules.

Regarding S.H.'s argument that the appointing authority's claim that she was not qualified for the subject vacancy was a pretext for discrimination because the initial letter to her only indicated that she was not selected to interview due to the number of candidates, the record indicates that the letter that she received was a standard letter. It is noted that there is no requirement under Civil Service law and rules which requires the appointing authority to inform candidates why they were not selected for an interview for a vacancy position. Therefore, the lack of details in

the letter regarding why she was not selected to interview is not evidence that the reasons that the appointing authority gave upon her follow-up, *i.e.* her resume did not demonstrate that she met the requirements as indicated in the vacancy announcement, were pretextual and she was denied the opportunity to interview in retaliation for her prior complaints. Referring to S.H.'s comment that the prior employee who held the subject position did not meet the education requirement as this employee did not have college degree, the job specification for the subject title does allow for experience to substitute for education and the appointing authority explains that the position was previously occupied by someone who met this requirement through the substitution clause. As such, S.H. has not presented one scintilla of evidence, such as a witness, document or other evidence, indicating that any actions taken by the appointing authority have been based on race or retaliation. Mere speculation, without evidence, is insufficient to support a State Policy violation. *See In the Matter of T.J.* (CSC, decided December 7, 2016).

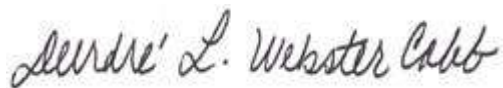
Additionally, it is noted that the Commission is not making any determination as to whether S.H. meets the qualifications for the subject title and is simply determining that there is no evidence that the appointing authority's actions violated the State Policy. If a promotional examination is ultimately announced, S.H. may choose to apply for that permanent opportunity at that time and this agency will make an eligibility determination. Meanwhile, if S.H. believes that she is currently performing out-of-title, she can submit a classification appeal pursuant to *N.J.A.C. 4A:3-3.9*.

### 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 2<sup>ND</sup> DAY OF NOVEMBER, 2022



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