



STATE OF NEW JERSEY

In the Matter of N.H., Division of
State Police

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

CSC Docket No. 2023-427

Discrimination Appeal

ISSUED: December 7, 2022 (SLK)

N.H., a former Trooper¹ with the Division of State Police, represented by Cedric Ashley, Esq., appeals the decision of a Chief Administrative Officer, Office of the Attorney General, which was unable to substantiate that he was subject to discrimination in violation of the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy).

By way of background, N.H., who is African-American, alleged that J.N., a Caucasian Lieutenant in the Office of Professional Standards (OPS), conducted a racially biased investigation against him and J.F., a retired Caucasian Colonel and Superintendent, State Police², did not re-enlist him as a Trooper due to his race. N.H. explained that in September 2016, he posted the image of a t-shirt on social media, which included the faces of nine historically significant African-American women, where one of the women was Joanne Chesimard, who was an escaped convict who had been imprisoned for the murder of a State Trooper in 1973. N.H. stated that he did not recognize all the women on the t-shirt, but at the time, he believed that they were positive role models. After N.H. learned that the image of the t-shirt was circulating among Trooper ranks, he presented that he removed the image from his social media account, but the next day he was removed from his assignment at Cranbury Station and detached to the Office of the Deputy Superintendent of Administration.

¹ Personnel records indicate that N.H.'s unclassified appointment terminated on October 4, 2017.

² Personnel records indicate that J.F. retired, effective October 13, 2017.

In February 2017, J.N. conducted an OPS interview with N.H., where N.H. alleged that J.N. asked him racially biased questions. Specifically, N.H. presents that J.N. showed him wearing a Cincinnati Reds baseball hat and asked, "We know that you are originally from Newark – Are you a Bloods member?" N.H. believed that this was racially biased because the question assumes that all African-Americans from Newark who wore red hats were likely gang-affiliated. Additionally, N.H. provides that J.N. provided him an image of himself smoking from a hookah and then asked what he had been smoking. N.H. claims that this was racially biased because the question assumes all African-Americans smoked marijuana. The Equal Employment Opportunity (EEO) Office could not substantiate the allegations because OPS' investigative file, as well as witnesses, found that J.N.'s questions were based on information gathered during the investigative process, including information provided by law enforcement gang experts. Specifically, the EEO found that questions regarding Newark gang membership were asked because N.H. was associated with motorcycle clubs in Newark, N.H. stated that gang membership could be identified by clothing and hand signs and a law enforcement gang expert reported that a prominent Bloods set in Newark was known to wear Cincinnati Reds baseball hats. Additionally, the investigation revealed that N.H. was asked about smoking because comments associated with the hookah image indicated that the participants were "burnt" or "high." Further, in October 2016, Troopers detected the scent of marijuana from N.H.'s motorcycle club clubhouse and from his vehicle.

N.H. also suggested that J.N. developed allegations against him because of his race. J.N. alleged that N.H. had inappropriate social media postings including the "Chesimard" t-shirt, images of State Police emblems, logos, Troopers, and equipment on Facebook and Instagram, and social media references to "Black Power," "racial violence," and "anti-police ideologies." J.N. alleged that N.H. had questionable conduct off-duty including the sale of the "Chesimard" t-shirt as well as a count for "Use of CDS," which was ultimately "Unfounded." J.N. alleged that N.H. disobeyed a written order based on N.H.'s domestic and international travel in 2016, where he was required to submit travel itineraries for both international and domestic travel. J.N. alleged that N.H. had unauthorized employment as he was a co-owner, investor, and participant in the Royalty Clothing Company and his involvement with the business ventures of the Top Gunnerz Motorcycle Club, which rented out "The Hangar" for various functions and held parties with entrance fees. J.N. alleged that N.H. disobeyed a verbal order based on a Management Awareness Personnel Performance System (MAPPS) entry that had been entered by his former supervisor from Hamilton Station to refrain him from posting inappropriate images on social media. J.N. alleged that N.H. filed intentional false reports because N.H. had logged warnings in various State Police record systems, including his warning book, Computer Automated Dispatch (CAD), and the E-daily electronic time tracking system, that were never issued. J.N. alleged that N.H. had questionable associations based on multiple connections between N.H., N.H.'s cousin, the Top Gunnerz

Motorcycle Club and Thug Riders Motorcycle Club, where law enforcement gang experts examined N.H.'s social media and reported indicia of gang affiliation. The EEO found that these allegations were developed based on information uncovered during the investigation and there was no evidence that J.N. developed these allegations based on N.H.'s race in violation of the State Policy.

N.H. further alleged that J.N. leaked confidential information from his OPS interview to a retired Trooper who managed a Facebook group called "The Outfit." However, the EEO did not uncover any evidence to support this allegation. Moreover, to the extent that the confidential information included the image of the "Chesimard" t-shirt, that image circulated among State Police personnel prior to J.N. being assigned as the investigator.

N.H. alleged that J.F. did not re-enlist him as a Trooper due to N.H.'s race. The investigation revealed that N.H. was subject to a four-year re-enlistment process. As part of the Meaningful Review Process, OPS recommended that N.H. appear before the Re-enlistment Review Board (Board) based on the misconduct issues. By the time N.H. appeared in May 2017, the allegations from the OPS investigation had been substantiated. The Board members had been provided a summary of the substantiated OPS matters against N.H. and unanimously voted not to re-enlist him. N.H. stated that the then-Mayor ignored him when he encountered him in the restroom, did not acknowledge him during his Board appearance, and appeared angry. Because of the Mayor's demeanor, N.H. believed that the Mayor became aware of the OPS issues from "The Outfit." However, the EEO noted that all Board members were aware of N.H.'s OPS issues. The investigation indicated that when J.F. made the decision not to re-enlist N.H., both OPS investigations had been concluded.

Further, when N.H. was detached to the Office of the Deputy Superintendent of Administration, additional OPS charges had been brought against him. It was alleged that N.H. engaged in questionable off-duty conduct based on a March 2107 incident where a civilian allegedly tailgated N.H. and N.H. confronted the civilian in uniform and unarmed. Additionally, it was alleged that N.H. committed theft by providing false information on a log, report or transmittal based on a review of N.H.'s hours in April 2016, where it was found that N.H. falsified information in his E-daily and received financial compensation for hours that he did not work.

The EEO found that there was no evidence that J.F. decided not to re-enlist N.H. because of his race and witnesses stated that race was not a factor in the decision-making process, which was based on the totality of the circumstances. Witnesses specified that the decision was based on N.H.'s multiple misconduct issues and the serious nature of the misconduct.

N.H. also believed that the penalty of non-re-enlistment was harsh in comparison to his misconduct. While N.H. characterized his misconduct based on an

inadvertent posting of Chesimard's image on his social media account, the investigation revealed that there were multiple substantiated allegations.

N.H. provided examples where Caucasian Troopers whom he alleged engaged in similar conduct remained Troopers. However, the investigation revealed that the comparators were not similarly situated in type, degree, or scope of misconduct. N.H. presented that Trooper T.B. was involved in an alcohol-related accident and only received a two-week suspension. However, the investigation revealed that OPS recommended a 180-day suspension and T.B. negotiated a plea agreement where he served a 90-day suspension without pay, another 90 days was held in abeyance, and he was subject to an independent alcohol evaluation and a five-point promotional deduction for four years. N.H. indicated that Trooper K.A. posted racist statements on Facebook and sent racist text messages without punishment. The investigation revealed that OPS substantiated multiple allegations against K.A. However, prior to the disciplinary process, K.A. was admitted to the Pre-Trial Intervention Program with regard to a criminal matter and forfeited his public employment. N.H. alleged that Trooper R.M. stole time and lied about his whereabouts during his shift. The investigation revealed that there was no OPS record of any such misconduct. However, the investigation indicated that R.M. had been subject to multiple OPS investigations.

On appeal, N.H. alleges that it was erroneous and incorrect for the EEO to not substantiate that his allegations that he was asked racially biased questions during a professional standards interview, that his investigation was based on race, that State Police investigators shared investigation information to a retired Trooper, and that the EEO could not find evidence that the State Police's failure to re-enlist him was based on race. He seeks full reinstatement to his position with back pay, benefits and seniority.

In response, the appointing authority, represented by Shaun Boparai, Deputy Attorney General, presents that the EEO investigated the allegations and found them to be unsubstantiated. It notes that N.H. has the burden of proof of proving his appeal by a preponderance of the competent, relevant, and credible evidence. However, the appointing authority states that N.H. merely repeats his general disagreement with the EEO's findings and conclusions. It states that the EEO, in its investigation, considered N.H.'s position and gave it the proper weight. The appointing authority relies on the EEO's findings and conclusions as outlined in the determination letter and asserts that N.H.'s appeal is without merit and does not provide a basis to disturb the EEO's determination.

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(e) provides, in pertinent part, that supervisors shall immediately refer allegations of prohibited discrimination to the State agency's EEO.

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).

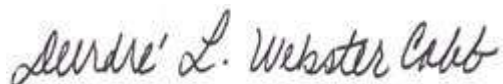
In this matter, the EEO's investigation revealed that N.H. was investigated by OPS and asked certain questions during the investigation based on legitimate business concerns and not based on race. Further, the investigation found no evidence that investigators shared confidential information with retired State Troopers. Finally, the investigation revealed that the decision to not re-enlist N.H. was based on substantiated violations against N.H. and not based on his race. Moreover, N.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. Mere speculation, without evidence, is insufficient to support a State Policy violation. *See In the Matter of T.J.* (CSC, decided December 7, 2016).

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 7TH DAY OF DECEMBER, 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: N.H.
Cedric Ashley, Esq.
Shaun Boparai, DAG
Division of EEO/AA
Jillian Hendricks
Records Center