



**STATE OF NEW JERSEY**

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

In the Matter of J.B., Department of  
Environmental Protection

Discrimination Appeal

CSC Docket No. 2022-1153

**ISSUED:** February 22, 2023 (SLD)

J.B., an Assistant Regional Forester, Department of Environmental Protection (DEP), appeals the determination of the Deputy Director, Division of Equal Employment Opportunity/Affirmative Action (EEO/AA), Civil Service Commission which found that the appellant failed to present sufficient evidence to support a finding that she had been subjected to a violation of the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy).

The appellant filed a complaint on January 13, 2020 with the EEO/AA alleging that T.W., a Chief, Bureau of Forest Management, J.S., a Manager 3, Environmental Protection Technical/Scientific, J.K., a Supervising Forester and R.Y., a Regional Forester, discriminated against him due to his disability. Specifically, the appellant alleged the following:

- J.K. and R.Y. treated him differently after he notified the DEP’s Human Resource Department (HR) of his disability;
- T.W. and J.S. failed to promote him to Regional Forester in 2019 due to his disability; and they showed favoritism to another candidate during the interview process;
- that the promotion to Regional Forester in 2019 was given to a candidate with less seniority;<sup>1</sup>

<sup>1</sup> Agency records indicate that C.S. was provisionally appointed, pending promotional examination procedures, to the title of Regional Forester, effective December 7, 2019.

- T.W. and J.S., excluded the appellant from staff meetings based on his disability;
- T.W. failed to provide the appellant with supervisory work to help the appellant advance;
- J.S., failed to register the appellant for a supervisor course and threatened the appellant with discipline due to his disability; and
- T.W. referred the appellant to the Office of Employee Relations in retaliation for expressing his discontent with the failure to promote the appellant in 2019.

In response, the EEO/AA conducted an investigation which included an analysis of relevant documentation and interviews. The EEO/AA found that as a result, it could not substantiate any violations of the State Policy had occurred. Specifically, the EEO/AA found the following. There was no evidence that J.K. and R.Y. treated him differently or avoided him after he notified HR of his disability. There was insufficient evidence to establish that T.W. and J.S. knew about the appellant's disability at the time of the promotion and that there was insufficient evidence to determine whether the appellant's disability was considered during the selection process. The EEO/AA also noted that it could not be corroborated that the candidate selected in 2019 was told by a third-party that J.S. had stated he wanted her to have the position "no ifs, ands, or buts." The EEO/AA found that although the candidate selected had less time in the title of Assistant Regional Forester than the appellant, that the time in grade was not the sole deciding factor used in making the appointment. Moreover, it noted that other individuals promoted to the title of Regional Forester had served in the title of Assistant Regional Forester at least as long as the appellant had prior to their promotion. The EEO/AA also indicated that the investigation failed to find any connection between the appellant's non-appointment and his disability. The EEO/AA found no evidence that the appellant was excluded from meetings due to his disability. Rather, the investigation revealed that the meetings the appellant was excluded from were meetings for higher-level programs only.

Additionally, the EEO/AA noted that there was insufficient evidence to confirm whether T.W. knew of the appellant's disability during the time period the appellant claimed that T.W. failed to provide him with supervisory work. The EEO/AA also indicated that at the time the appellant made the allegation, he was supervising an hourly employee and was working with his supervisor to develop the appellant's supervisory skills. Moreover, the EEO/AA asserted that the various witnesses corroborated that there were instances where the appellant demonstrated difficulty in working with other staff members. With regard to the appellant's allegation that J.S. failed to register him for a supervisor course, the investigation revealed that those courses were not available to all staff members, and require an application and approval from an employee's supervisor. Further, the EEO/AA noted that no witnesses corroborated the allegation that J.S. threatened to

discipline the appellant on numerous occasions based on his disability. Finally, the EEO/AA noted that the appellant acknowledged that he was referred to the Office of Employee Relations due to the appellant expressing his discontent with his non-appointment and T.W., however, it could find no connection between the appellant's January 13, 2020, discrimination complaint and the March 12, 2020 referral.

On appeal, the appellant initially complains that that the he did not receive the determination letter within the required time frame. The appellant also argues that the investigation was neither fair nor just. In this regard, the appellant notes that his complaint was initially investigated by the DEP's EED but was then sent to this agency due to a conflict. The appellant maintains that the original investigator from this agency's EEO/AA Office "showed support" to him and his claims, and had completed interviews with him and some coworkers prior to that investigator's retirement. The appellant notes that the original EEO/AA investigator was "very kind, supportive, respectful, and professional" of him and his disability and that the investigator interviewed and "consulted" with the appellant several times. The appellant maintains that this investigator had even stated to him that, with regards to the appellant's complaints, that he was being isolated, that it appeared that his "colleagues and supervisors have thrown [him] way under the bus." Additionally, the appellant asserts that it was completely unacceptable to have this matter reassigned to a third investigator who was only a trainee and the Division Director, after the first investigator died, and the second investigator, who was also kind and supportive, left the division. The appellant contends that this trainee and Division Director "obviously" knew nothing about this matter and were "obviously" on DEP's "side." In this regard, he notes that the Division Director had improperly copied his emails to the EEO Director in DEP, despite this matter being confidential. The appellant also contends that it was unfair that his coworkers were asked whether they knew he had a disability during their interviews, yet the EEO/AA did not find a violation of the State Policy. The appellant also asserts that he should have been present during the interviews of his coworkers, because then the truth would have been told. The appellant argues that the only "proof" that is needed to support his complaints is "himself" as he is not a liar, as well as the numerous interviews he went through during the investigation.

Additionally, the appellant reiterates his complaints that he was repeatedly not promoted to the title of Regional Forester, including in 2019 when the appointing authority instead appointed C.S., a female coworker who the appellant claims was "loud and obnoxious," and insubordinate to her supervisors.<sup>2</sup> In this

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<sup>2</sup> Agency records indicate that the appellant's name was certified (PS210670) to the appointing authority on June 28, 2021, from the Regional Forester (PS3804G), DEP, eligible list, as the second ranked eligible. In disposing of that certification, the appointing authority appointed C.S., the third ranked eligible, effective July 17, 2021. Agency records further indicate that C.S. was provisionally appointed, pending promotional examination procedures, to the title of Regional Forester, effective December 7, 2019.

regard, the appellant maintains that C.S. “is not that special,” and he believes that her promotions were political or she had a “contact” in HR who promoted her despite her behaviors. The appellant also reiterates his complaints against J.K., J.S., and T.W. For example, the appellant argues that T.W. “obviously” lied about not knowing his disability since he mentioned it to T.W. over 10 years ago. The appellant also asserts that he was called “Crazy J.,” several times during his career by assorted co-workers; and that his co-workers avoid talking to, approaching or helping him in the workplace. Moreover, the appellant complains that other Foresters have higher budgets for their programs and go on out-of-state trips that require hotels and compensation; and they have elaborate equipment provided to them for their programs. The appellant argues that he is nearly 50 and has held the same title for more than 14 years.

Finally, the appellant, in relevant part, requests as a remedy that the determination be reversed and he be immediately promoted to Regional Forester, for his preferred program, without the need for an interview. The appellant also requests that be assigned at least two Foresters to work for him in this program. The appellant also maintains that he should be allowed to keep his State vehicle upon his promotion. Finally, the appellant requests all documents from the DEP’s EED and this agency’s EEO/AA Office be provided to him.

In response, the EED indicates that it stands by its investigation and determination letter.

## CONCLUSION

Initially, *N.J.A.C.* 4A:7-3.1(a)3 provides that it is a violation of the State Policy to engage in any employment practice or procedure that treats an individual less favorably based upon any of the protected categories: race, creed, color, national origin, nationality, ancestry, age, sex/gender (including pregnancy), marital status, civil union status, domestic partnership status, familial status, religion, affectional or sexual orientation, gender identity or expression, atypical hereditary cellular or blood trait, genetic information, liability for service in the Armed Forces of the United States, or disability. *N.J.A.C.* 4A:7-3.1(a)3 further provides that the policy pertains to all employment practices such as recruitment, selection, hiring, training, promotion, 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 burden of proof in State Policy appeals lies with the appellant.

The Civil Service Commission (Commission) has conducted a review of the record in this matter and finds that an adequate investigation was conducted, and that the investigation failed to establish that the appellant was discriminated against due to his disability in violation of the State Policy. The EEO/AA

appropriately analyzed the available documents and interviewed the witnesses in investigating the appellant's complaints and concluded that there was no violation of the State Policy. Although the appellant claims that the investigation was not appropriate due to multiple investigators being assigned, the Commission notes that multiple investigators were assigned due to unforeseen circumstances, and therefore, the fact that there were multiple investigators does not establish that the investigation was improper. This history also contributed to the length of time for this matter to be completed. Moreover, other than the appellant's mere statements, he has not provided any proof that his disability was known, and/or that such knowledge played a part in him not being promoted, not being included in meetings, or any of the other inappropriate behavior that the appellant alleges. Accordingly, the investigation was thorough and impartial, and no basis exists to find a violation of the New Jersey State Policy Prohibiting Discrimination in the Workplace.

### 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 22<sup>ND</sup> DAY OF FEBRUARY, 2023

*Dolores Gorczyca*

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