



STATE OF NEW JERSEY

In the Matters of E.H., Department
of Health

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

CSC Docket Nos. 2022-1551
and 2022-1565

Discrimination Appeals

ISSUED: May 24, 2023 (JET)

E.H., an Administrative Analyst 3¹ with the Ambulatory Care Facility Assessments Unit, Office of Healthcare Financing, Division of Management and Administration, Department of Health, appeals the determinations of the Office of Diversity and Equity Services (ODES), which found that the appellant failed 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). Since these matters concern similar issues, they have been consolidated herein.

The appellant, a female, submitted a complaint on March 3, 2021, alleging that she was subjected to disparate treatment based on her gender by D.P., a male Supervising Administrative Analyst and Director of the appellant's unit.² Specifically, the appellant alleged that D.P. did not listen to her with respect to incorrect ambulatory assessment fee letters that he had forwarded that contained calculation errors; and did not allow her to complete the "Cease and Desist" procedure, that she drafted. The appellant also alleged that R.F., a female Executive Director, did not want to implement the Cease and Desist procedure. Additionally,

¹ Agency records reflect that the appellant was provisionally appointed, pending, promotional examination procedures to the title of Administrative Analyst 3, effective May 13, 2017.

² Agency records reflect that D.P. was provisionally appointed, pending promotional examination procedures, to the title of Supervising Administrative Analyst effective June 22, 2019. Subsequently, D.P. was appointed to the Senior Executive Service in the Department of the Treasury, effective January 15, 2022.

the appellant alleged that D.P. asked her to complete her employee evaluations, and after she completed such, D.P. subsequently informed her that her employee evaluations were incorrectly completed. Moreover, the appellant alleged that she only received a score of “3” on her employee evaluation.³ Finally, the appellant alleged that, after she informed D.P. by text that she could not access a conference call while working from home, D.P. told her to come to the office.

The ODES conducted an investigation which included an analysis of relevant documentation and interviews. The ODES found that, as a result, it could not substantiate that a violation of the State Policy had occurred. In particular, the ODES noted that during D.P.’s interview, he denied that the appellant informed him about the fee calculation errors during a meeting or that he subjected the appellant to disparate treatment based on gender. However, he did confirm that the appellant and M.S., a provisional male Administrative Analyst 2 in the appellant’s unit,⁴ advised him of the assessment fee error, but he made the supervisory decision to send the calculations out anyway. R.F. confirmed that, as Director, it was within D.P.’s supervisory purview to send out the assessment fees with the calculation errors. R.F. also stated that she did not recall that the appellant informed D.P. of the errors during a meeting. With respect to the allegations pertaining to the “Cease and Desist” procedure, D.P. confirmed that, after consultation with R.F. and various other supervisors in the Licensing unit, the procedure was not implemented for legitimate business reasons. R.F. confirmed that D.P. was not the sole person who decided not to implement the “Cease and Desist” procedure. With respect to the employee evaluations, D.P. denied that he asked the appellant to complete her employee evaluations. Rather, D.P. explained that he asked the appellant to provide a description of her duties for the employee evaluations, as he had been serving as Director for only one month. R.F. stated that the matter pertaining to the employee evaluations had nothing to do with the appellant’s gender and the matter was settled.⁵ As such, the ODES determined that the appellant was not subjected to gender bias in violation of the State Policy.⁶

³ With respect to the 2021 employee evaluations, the ODES determined that such information could not be added to the appellant’s initial complaint, as the investigation for that matter had already been completed and forwarded for administrative review.

⁴ The record reflects that M.S. was appointed, pending promotional examination procedures, to the title of Administrative Analyst 2, effective February 2, 2019, Department of Health. M.S. was provisionally appointed pending promotional examination procedures to the title of Administrative Analyst 3, Fiscal Management, Department of Children and Families, effective April 11, 2022.

⁵ The record reflects that the appellant filed a grievance with respect to the employee evaluations, which was addressed by the appointing authority. The record also reflects that the appellant also filed a complaint with the Federal Equal Employment Opportunity Commission (EEOC). The record reflects that the EEOC matter was closed, as the appellant’s claims in that matter were not substantiated.

⁶ The ODES indicated that it did not investigate the matters pertaining to the appellant’s 2020 employee evaluations and conference call issues, as it determined such issues were work-related and did not implicate the State Policy

On appeal, the appellant asserts that the ODES did not thoroughly investigate her claims pertaining to D.P.'s conduct in order to determine if she was subjected to a violation of the State Policy. Specifically, the appellant asserts that, although she asked the ODES investigator to interview the representative from this agency that conducted the classification reevaluations for herself and M.S., the investigator stated that such information would only be reviewed if warranted. The appellant asserts that, if the ODES had investigated such concerns, it would have determined that D.P. prevented her from performing her duties. The appellant also asserts that R.F. should not have been interviewed and is an unreliable witness, as she was involved with D.P.'s hiring process. The appellant states the ODES did not assist her with resolving her concerns with respect to her completing her own employee evaluations. Moreover, the appellant contends that the ODES "cherry picked" the information it would review and it failed to review all of the information she provided.

GENDER BIAS/RETALIATION

The appellant states that, at some point shortly after D.P.'s assignment as her supervisor, she overheard D.P. tell M.S., that D.P. was planning to put M.S. in charge of the appellant's unit. The appellant states that during a meeting with D.P., she informed him that she would not tolerate being treated differently than M.S. in the workplace, to which he replied that it was not his intention that she believed that he was treating her differently. The appellant maintains that it should be inferred from the foregoing that D.P. treated her different due to her gender.

The appellant also asserts that, contrary to the ODES' findings, she informed D.P. that her duties included the recommending, developing, and implementation of policies and procedures, but D.P. ignored her repeated requests to implement such policies. In this regard, the appellant explains that, although she drafted policies for "Cease and Desist" and "Judgement" procedures, and attempted to implement such policies, D.P. prevented her from implementing the policies on multiple occasions. In addition, the appellant asserts that as such duties were important to her classification review, she believes D.P.'s actions in preventing her from implementing the new procedures may have had an adverse effect on the January 14, 2021, classification determination. In this regard, the appellant states that, after her appeal of her ineligibility for the promotional examination for Administrative Analyst 3 (PS6733H), Department of Health, the Civil Service Commission (Commission) referred the matter to the Division of Agency Services (Agency Services) to conduct a classification review of her position. *See In the Matter of E.H., Administrative Analyst 3 (PS6733H), Department of Health* (CSC, decided March 6, 2019). In its January 14, 2021 classification determination, Agency Services found that the proper classification of the appellant's position at that time was Auditor 1. The appointing authority subsequently reassigned the appellant duties commensurate with her current title of Administrative Analyst 3, and it submitted a new request for a

classification evaluation to Agency Services for review. In its September 28, 2022 determination, Agency Services found that the proper classification of the appellant's position was Administrative Analyst 3. The appellant believes that D.P. may have provided information indicating that she was performing Auditor duties during the pendency of her first classification review, as she did not perform any Auditor duties. The appellant asserts that, contrary to D.P.'s claims, he did not request that she provide an analysis from her pertaining to the "Judgement" policy she created. In support, she submits a June 15, 2021 e-mail between D.P., R.F. and herself, in which she indicated, in relevant part, that D.P. continued to retaliate against her and lied to R.F. pertaining to her work performance, and she wanted the ODES to be clear about the documentation that she submitted. The appellant also states that she "believed" R.F. and D.P. discussed D.P. responding to the appellant's requests to perform certain duties. The appellant also indicated that she believes D.P. told R.F. that the appellant never provided D.P. with the analysis in order to "shift blame" to the appellant. In addition, the appellant stated that D.P. sent an e-mail to her at some point which addressed her requests to file judgements, which stated, "you need to provide an analysis of these two accounts. You never did that." The appellant maintains that, although she was aware that D.P. was forwarding such responses to R.F., he never provided proof that he instructed her to provide an analysis of the accounts.

The appellant also maintains that D.P. made multiple misrepresentations on her employee evaluations. The appellant explains that, in July 2019, D.P. asked the appellant for a copy of the Administrative Analyst 3 announcement that was issued by this agency for his review, and that he subsequently asked her to draft the "major goals of the ratee" section of her 2019 employee evaluation. The appellant states that, although she believed it was D.P.'s responsibility to draft her employee evaluation, she submitted the information to him as requested by e-mail in December 2019. She also told R.F. that it was not her responsibility to draft any portion of the employee evaluations. The appellant asserts that, although she disagreed with the 2019 Interim employee evaluation and her duties listed under the policies and procedures section, D.P. informed her that he had previously discussed the 2019 employee evaluation with R.F., and R.F. agreed that they were fair. The appellant admits that she informed D.P. during a meeting that she would not continue to follow his instructions with respect to policies that she drafted, as she was concerned that she would be admonished by the appointing authority. The appellant argues that, although she provided information to R.F. which refuted the misrepresentations in her employee evaluation, R.F. stated to the appellant that she relied on D.P.'s statements with respect to the appellant's 2019 employee evaluations, since he was the appellant's supervisor.⁷

⁷ The appellant also states that she filed a grievance regarding an error with her ratings. As a result of the grievance, the parties entered into a settlement agreement in which increased the ratings she grieved. Therefore, any arguments concerning the appellant's ratings for her 2020 interim employee evaluation will not be addressed in this matter. *N.J.A.C. 4A:7-3.2(m)1*, employees filing appeals which

RETALIATION

The appellant also asserts that D.P. subjected her to retaliation after she notified him that various fee notices contained calculation errors. The appellant states that, contrary to the ODES' claims, she advised D.P. of such errors multiple times during meetings in August and September 2019, and that she also advised R.F. of the errors. The appellant claims that D.P. did not inform her that he had developed a more efficient method of identifying defaulted accounts, and she believes that D.P. withheld such information in order to show that she was not performing her job.

ACCOMMODATION REQUEST

Finally, the appellant asserts that, although she was authorized to work from home with an Americans with Disabilities Act (ADA) accommodation, D.P. instructed her to report to work to participate in a conference call, after she had advised him she was unable to access the conference call from home. In support of the foregoing, the appellant provides copies of M.S.'s June 10, 2019 classification determination; copies of various e-mails; copies of her employee evaluations; and copies of the letters authorizing an accommodation to work from home.

In response, the ODES maintains that the investigation was thorough and complete and did not show that D.P. subjected the appellant to disparate treatment in the workplace based on gender or that she was subject to retaliation in violation of the State Policy. The ODES confirms that the appellant was interviewed on May 17, 2021, but asserts she did not provide any information at that time to substantiate a State Policy violation based on gender. Moreover, the ODES maintains that the appellant's allegations are work-related, which do not invoke the State Policy. The ODES asserts that it reviewed pertinent documentation and interviewed witnesses with respect to the appellant's claims, and there was no substantiation that the appellant was singled out in the workplace by D.P. due to her gender in violation of the State Policy. Moreover, it maintains that it was appropriate to interview R.F., since as Executive Director of the appellant's unit, she was able to provide pertinent information with respect to the appellant's claims and D.P.'s actions as a supervisor. The ODES asserts that all of the documentation submitted by the appellant was reviewed, and D.P.'s actions were determined to be professional and work-related. Moreover, the ODES contends that the appellant and D.P. had a contentious working relationship, and that the appellant had difficulty conforming as a subordinate employee when D.P. was her supervisor.

The ODES asserts that, with respect to the policies the appellant claimed that she was authorized to draft, R.F. confirmed that she did not want to implement the

raise issues for which there is another specific appeal procedure must utilize those procedures. As such, the Commission does not have jurisdiction to review the appropriateness of the actual PAR scores in this matter.

“Cease and Desist” and “Judgement” procedures. Specifically, R.F. maintained that implementing such policies and procedures would prevent a facility from operating properly if money was owed to the appointing authority. The ODES confirms that D.P. was not the sole person responsible for deciding that the appellant’s procedures would not be implemented. In this regard, the ODES explains that, during their interviews, R.F. and D.P. confirmed that they consulted with other female employees in the workplace, including female supervisors, and it was agreed that the procedures would not be implemented for legitimate business reasons.

The ODES states that, with respect to the appellant's allegations that D.P. asked her to complete her 2019 employee evaluation, D.P. stated that, since he had only been the Director for a month, he asked the appellant to provide a description of her job duties.⁸ R.F. stated during the investigation that she was aware of the situation with the employee evaluation, and it had nothing to do with the appellant’s gender.

The ODES asserts that the appellant’s contentions with respect to her classification evaluations are work-related, which do not invoke the State Policy. The ODES explains that, although the January 14, 2021 classification determination recommended the appropriate title for the appellant’s position was Auditor 1, the appointing authority removed the Auditor 1 duties, and assigned duties appropriate for the title of Administrative Analyst 3, and the appellant remained serving in the provisional title of Administrative Analyst 3. Moreover, the ODES explains that there was no substantive evidence that D.P. provided any adverse information with respect to the appellant’s classification evaluation.

With regard to the appellant’s allegations concerning the fee assessments, the ODES explains that R.F. confirmed during her interview that the fee assessments were sent out with a \$.02 error, that it was within D.P.’s discretion to issue the assessment fee notices with such an error, and that such errors frequently occur. The ODES adds that R.F. did not recall a meeting with the appellant, where she alleged that D.P. denied that he was notified of the errors.

Finally, the ODES notes that on September 30, 2021, the appellant filed a new complaint against D.P. pertaining to work-related text messages that occurred between D.P. and herself, in which he told her to come into the office.⁹ Specifically, the appellant claimed that she was unable to participate in a conference call with D.P., and when she notified him of the situation, he asked her to report to the office in order to participate in the conference call. The appellant claimed that D.P. violated her ADA accommodation to work from home when he asked her to report to the

⁸ The ODES notes that D.P. provided an e-mail confirming that he asked the appellant to describe her job duties in the employee evaluation.

⁹ The ODES states that these new allegations were reviewed as a separate matter, as the initial investigation of the appellant’s claims had already been completed.

office.¹⁰ However, the ODES asserts that a review of the text messages revealed that they were work-related and did not violate the appellant's ADA accommodation, nor did they invoke the State Policy.

CONCLUSION

N.J.A.C. 4A:7-3.1(a) provides that under the State Policy, discrimination or harassment based upon the following protected categories are prohibited and will not be tolerated: 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. Additionally, 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 the State Policy. Examples of such retaliatory actions include, but are not limited to, termination of an employee; failing to promote an employee; altering an employee's work assignment for reasons other than legitimate business reasons; imposing or threatening to impose disciplinary action on an employee for reasons other than legitimate business reasons; or ostracizing an employee (for example, excluding an employee from an activity or privilege offered or provided to all other employees). *See N.J.A.C.* 4A:7-3.1(h). The appellant shall have the burden of proof in all discrimination appeals. *See N.J.A.C.* 4A:7-3.2(m)(3).

The Commission has conducted a review of the record in this matter and finds that the appellant has not established that she was subjected to discrimination in violation of the State Policy. The record reflects that the ODES conducted a proper investigation. It interviewed the relevant parties in this matter and appropriately analyzed the available documents in investigating the appellant's complaint. While the appellant argues that the investigation was not adequately conducted, the appellant has failed to point to specific deficiencies in the investigation which would change the outcome of this matter. In this regard, although the appellant states that the ODES "cherry picked" what it would investigate, and that it did not review all of the documentation she submitted, the ODES was only obligated to review as much, or as little, documentation as necessary in order to determine if there was a violation of the State Policy, and in this case, no violation was substantiated. Although the appellant argues that R.F. is not a reliable witness, the Commission disagrees. R.F., as Executive Director of the appellant's unit and as D.P.'s supervisor, had specific knowledge of the incidents that occurred that were the subject of the appellant's complaint, and the appellant has not provided any substantive information in this matter to refute R.F.'s statements, or which establishes that R.F. was not a credible

¹⁰ The record does not reflect that the appellant reported to work to participate in the conference call.

witness. Moreover, since the appellant states that she contacted R.F. on multiple occasions about her concerns in the instant matter, the ODES properly interviewed R.F. The fact that R.F. was involved in D.P.'s appointment process is of no moment. Moreover, although the appellant argues that she was subjected to retaliation, she did not provide any substantive evidence in support of such arguments. In this regard, the appellant could not have been retaliated against since she did not have any prior pending complaints at the time she filed the complaint in the instant matter. Based on the detailed submissions from the parties, the Commission is satisfied that it has a complete record before it to issue a determination with respect to this matter.

In this matter, the appellant did not provide any witnesses or substantive evidence to show that she was subjected to sex/gender discrimination, and D.P. and R.F. denied the allegations. With respect to the appellant's allegations that D.P. prevented her from performing her duties, she has not substantiated her claims. The appellant admits in this matter that she was authorized to draft various policies and procedures, **subject** to D.P.'s approval, and the appellant admits in this matter that she, in fact, drafted the above noted policies. The record also reflects that the appellant's supervisors, D.P. and R.F., after consultation with other supervisors, did not implement the policies based on the legitimate business needs of the agency. R.F. also confirmed that implementing such procedures would prevent a facility from operating properly if money was owed to the appointing authority, and that D.P. was not the sole individual who decided not to implement the policies. It was at the appointing authority's discretion to decide not to implement the policies based on its legitimate business needs. The fact that the policies were not implemented does not establish that the appellant was prevented from performing her duties, singled out in the workplace, discriminated against based on gender, or subjected to retaliation. With respect to the appellant's other allegations that D.P. issued assessment fees that contained calculation errors, such information does not, in and of itself, show that she was prevented from performing her duties or singled out in the workplace in violation of the State Policy. As confirmed by R.F., it was at D.P.'s discretion as the supervisor of the appellant's unit to issue the assessment fees with the errors, and the appellant's objections do not overcome D.P.'s supervisory authority. The appellant's concern about the fee assessment errors are work-related and do not, in and of itself, substantiate that she was discriminated or retaliated against in violation of the State Policy.

With respect to the appellant's concerns pertaining to the employee evaluations, generally, the Commission does not review the exercise of the appointing authority's discretion in the assignment of employee evaluation scores, unless there is substantial credible evidence that a rating is based upon invidious discrimination considerations, such as age, gender bias, or race; is in retaliation for the exercise of lawful activities, such as grievance filings; or is the product of a significant violation of the employee evaluation rules. However, in the instant matter the appellant has

failed to present any evidence that her rating was based on an improper reason. Rather, the investigation revealed that D.P. asked the appellant to provide a description of her duties, as he was only serving as the appellant's supervisor for one month. The fact that D.P. asked the appellant to draft a portion of her employee evaluations, in and of itself, does not constitute a violation of the State Policy. With respect to the employee evaluation scores, she does not provide any substantive evidence to show that the employee evaluations scores were the result of invidious motivation, gender bias, or retaliation in violation of the State Policy. As such, the appellant has not met her burden of proof in this matter with respect to her employee evaluations.

With regard to the appellant's concerns pertaining to her classification evaluations, the appointing authority previously addressed such concerns with this agency, and assigned her duties appropriate to the title of Administrative Analyst 3. Consequently, she continues to serve provisionally in the subject title. In this regard, the January 14, 2021, classification determination was based on the March 3, 2020, Position Classification Questionnaire (PCQ) that was completed and submitted by the appellant, and based on this agency's review of those duties, it was determined that she was performing the duties of an Auditor 1. Moreover, the March 3, 2020, PCQ reflects that D.P. indicated that he agreed with the duties listed in the PCQ by the appellant. As such, there is no substantive evidence that D.P. had any discriminatory motivation with respect to the duties listed in the classification appeal. Moreover, after this agency's determination that the proper title for the appellant's position was Auditor 1, the appointing authority assigned her appropriate duties and this agency issued the September 28, 2022, classification determination, indicating that the proper classification of her position was Administrative Analyst 3. Further, the appellant's employee evaluations did not have any bearing on the January 14, 2021, classification determination, since as noted above, the duties listed by the appellant in her PCQ were used to determine the appropriate title. As such, the January 14, 2021, classification determination, in and of itself, does not evidence that the appellant was singled out in the workplace based on gender, nor does it show that she was subjected to retaliation in violation of the State Policy.

With respect to the appellant's arguments that M.S. was treated more favorably in the workplace, the appellant does not submit any substantive evidence in support of that claim. Initially, a review of M.S.'s June 10, 2019, classification determination does not indicate that M.S. was reporting to D.P. at the time his classification evaluation was conducted. Rather, it reflects that he was reporting to T.C., a Research Scientist 1. Moreover, D.P. was appointed as a Supervising Administrative Analyst on June 22, 2019, which was *after* M.S.'s June 10, 2019 classification determination was issued. Further, M.S.'s June 10, 2019, classification determination did not have any bearing on the appellant's January 14, 2021, classification determination, as their duties were separately evaluated by this agency based on the information they each provided in their separate classification packages.

Moreover, the appellant was provisionally appointed as an Administrative Analyst 3 in May 2018, and M.S. was provisionally appointed as an Administrative Analyst 2, which is a lower level title, in February 2019. Finally, the appellant's claims pertaining to her classification evaluation does not invoke any of the protected categories of the State Policy as noted above. Although the appellant states that M.S. was promoted as a provisional Administrative Analyst 3 in another agency, such information is of no moment, and there is no substantive evidence that D.P. assisted him with that appointment in violation of the State Policy.

Furthermore, the appellant's claims with respect to her accommodation are without merit. Although she was unable to participate in a conference call, there is no evidence that the accommodation to work five days a week from home was permanently discontinued or that she was instructed to report to the office on a continuous basis.

Finally, the allegations the appellant now provides on appeal do not evidence that she was discriminated against based on any of the above listed protected categories in the State Policy. The appellant has not provided a nexus between her allegations and any of the above noted protected categories of the State Policy to show that a violation occurred. Moreover, there is no evidence to show that the appellant was singled out based on her gender, or that she was subjected to retaliation as described above. Moreover, the Commission has consistently found that 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). Other than the appellant's tenuous allegations in this matter, she has failed to provide any evidence that she was discriminated or retaliated against in violation of the State Policy. Accordingly, she has not satisfied her burden of proof in this matter.

ORDER

Therefore, it is ordered that these appeals 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 MAY, 2023

Allison Chris Myers

Allison Chris Myers
Acting 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: E.H.
Frank Maimone
Division of Equal Employment Opportunity/Affirmative Action
Records Center