



STATE OF NEW JERSEY

In the Matter of A.A., State Parole Board

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

CSC Docket No. 2023-2060

Discrimination Appeal

ISSUED: August 23, 2023 (SLK)

A.A., an Assistant District Parole Supervisor with the State Parole Board (SPB), appeals the determination of the Chairman 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, A.A., who is an African American female, alleged that she was discriminated against based on race, color, and sex/gender. Specifically, she alleged that the SPB did not request an extension of the eligible list for District Parole Supervisor/Lieutenant when vacancies emerged and the SPB has a systemic problem promoting and maintaining minority supervisors, particularly females, and SPB chose to use Officers in Charge in lieu of filling vacancies with qualified candidates. Further, A.A. alleged that she had never seen any affirmative actions taken by the SPB to encourage minorities or women to apply for promotions. Additionally, A.A. alleged that the promotional tests are created in house by existing members of the agency and are discriminatory; that without standardization of tests there is no way to guarantee reliability and validity; and that tests introduce inherent bias of the test creators and there is no guarantee that the test questions are confidential. Moreover, A.A. alleged that the SPB failed to provide a mentor of the same ethnicity and race of herself. Finally, A.A. alleged that specialized units are staffed by hand chosen officers and the vast majority are not minorities or minority females and there are no African American female polygraphers, which is a position that she applied for and

interviewed twice, but she was not selected. However, the investigation was unable to substantiate any of her allegations.

On appeal, A.A. asserts that the investigation was neither fair nor impartial. She contends that the Equal Employment Officer (EEO) made her decision before her interview was over, even claiming to defend the SPB. A.A. presents that when she questioned how it was possible that only one African American female had rose above the rank of Sergeant, the EEO responded, "well, there's a test." She notes that her union representative was present during the interview. A.A. asserts that the EEO was adversarial and hostile towards her and indicated that she was overwhelmed because she had a "major" investigation. She states that the EEO's questions were hard to understand and she lost patience with her. A.A. alleges that when she mentioned that she was not the only minority who believed that the SPB engaged in discriminatory practices, she claims that the EEO responded by using profanities, which she objected to. Thereafter, A.A. indicates that the EEO tried to clean up her language. However, A.A. asserts that this type of language creates a hostile work environment.

Additionally, A.A. provides that she was called to the Office of Employee Relations (OER) regarding the grievance portion of her complaint. She claims that as the meeting progressed, the OER Officer became hostile towards her and began speaking over her, stating that this is what the union bargained for, and she was traumatized by her dealings with the union. She indicates that her union representative and union Vice President were present during this encounter.

Thereafter, A.A. provides that she was sent a follow-up email indicating that since the issues related to her grievance were discussed during her State Policy complaint, her grievance was closed because it was duplicative. However, her grievance regarding her claim that the SPB did not request an extension of the eligible list for District Parole Supervisor despite there being a number of openings had nothing to do with her State Policy complaint. She states there were three qualified Sergeants who could have been promoted instead of assigning Officer in Charge duties to unqualified and untested candidates. She notes that the Civil Service Commission (Commission) has indicated that the preferred method to fill vacancies is to review or extend lists rather than provisionally appoint.

A.A. states that only one African American female has been promoted above Sergeant in the last 26 years, which contradicts the Governor's Office's diversity efforts. She asserts that while minority recruitment has been identified as an issue, minority retention and promotion are also issues. In response to the determination where it indicated that SPB records do not indicate that she applied for a certain position, A.A. claims that she does not need to furnish proof to demonstrate that specialized units are often staffed with "token" officers and racial and gender

makeups do not reflect the agency as whole. She is requesting a fair and unbiased investigation.

In response, regarding the allegation that the SPB discriminated against A.A. based on her color, race and gender/sex because the SPB did not request an extension of the eligible list for District Parole Supervisor, the SPB presents that the subject certification¹ contained nine names, including A.A. who was the ninth ranked candidate. The SPB provides that the first three eligibles were appointed, A.A. was not reachable based on the number of vacancies at that time, and the list expired on January 5, 2022. Further, it indicates that because there were no vacancies at that time, under Civil Service rules, a list cannot be revived based on anticipated vacancies so there was no basis to ask for the list to be extended as the vacancies did not arise until September 1, 2022, which was after the January 5, 2022, list expiration date. Moreover, although A.A. provides a case involving the Parole Counselor Apprentice title where the Commission determined to revive a list because permanent appointments are preferable to provisional appointments, the appointment type is not at issue here. Instead, the SPB used Officers in Charge, which is not a Civil Service designation, to fill its operational needs when an employee is on leave, and the assignment of an Officer in Charge is not used to fill vacancies. The SPB emphasizes that it does request that lists be extended or revived when there are current vacancies at the time of a list expiration.

Concerning A.A.'s allegation that it did not specifically take affirmative action to encourage minorities or women to apply for promotions, the SPB presents that it posts promotional announcements and emails employees who are eligible for promotions in compliance with Civil Service rules, and all eligible candidates are given an equal opportunity to apply for promotions. Regarding A.A.'s claims about two polygrapher positions, it provides that she did not provide the dates where she applied for these positions, and its records do not indicate when she applied to be a polygrapher. Therefore, it is unable to investigate this allegation. Referring to A.A.'s allegation that there are no minorities and minority females in specialized units, it states that as the SPB's Central Office Information Network is under revision, it cannot investigate the number of minorities in specialized units due to a lack of documentation and time references. However, it provides that selection is based on an interview process and responses are rated by a panel of supervisory staff. Similarly, there is no requirement under the State Policy that SPB provide A.A. a mentor of the same ethnicity and race.

Referring to A.A.'s statements about the EEO investigation and that she received hostile treatment because she alleges that she did not understand the questions, the SPB presents the interview questions which demonstrate that the questions were clear, and it presents A.A.'s initialing each page of her statement,

¹ The SPB indicates that the list was certified on January 5, 2022, but its disposition was not due until April 5, 2022.

which acknowledged that the interview was clear. Regarding A.A.'s grievance, the OER Officer explained to A.A. that if her issues regarding the District Parole Supervisor list were being addressed in her State Policy complaint, there would be no need for a grievance hearing, as it would be duplicative, and both A.A. and her union representative agreed to this understanding. Therefore, since the State Policy complaint addressed her issues regarding the District Parole Supervisor list, the OER Officer sent the appellant and her union representatives notice that the grievance would be closed.

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, color, and sex/gender will not be tolerated.

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 Commission.

In this matter, regarding AA's allegation that the SPB did not request an extension of the eligible list for District Parole Supervisor/Lieutenant when vacancies emerged, the record indicates that at the time the list expired on January 5, 2022, there were three vacancies. Further, the first three eligibles were appointed and the appellant, the ninth ranked candidate, was not reachable for appointment. Therefore, record indicates that the SPB made its appointments in compliance with Civil Service rules. Additionally, at the time the list expired, there was no basis for the SPB to request that the list be extended as there were no vacancies at that time, and the SPB's decision to not make such a request was based on Civil Service rules and not discriminatory. Concerning A.A.'s allegations that the SPB has a systemic problem promoting and maintaining minority supervisors, particularly females, the vast majority of specialized units are not staffed by minorities or women, and the SPB used Officers in Charge to fill positions, A.A. has not presented one witness, documentation, or other confirming evidence that the SPB made any decisions in this regard based on one's membership in a protected class. Also, as A.A. did not provide any details regarding her non-selection as a polygrapher, the SPB could not investigate those selections. Further, SPB's use of Officers in Charge to fill its operational needs when an employee is on leave is not a violation of Civil Service law and rules. Additionally, under the State Policy, there is no requirement that SPB take affirmative action to encourage minorities and/or females to apply for promotions, and there is nothing in the record to suggest that any promotional announcements were not announced in manner that did not comply with Civil Service law and rules or was otherwise in violation of the State Policy. Regarding A.A.'s comment about promotional tests, she has not provided any specificity indicating how

specific test questions were biased or discriminatory. Referring to A.A.'s alleged hostile treatment by the EEO and OER Officers, there is no evidence that any such alleged treatment was based on her membership in a protected category. Moreover, disagreements among coworkers 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). Concerning the closing of A.A.'s grievance, the record indicates that the OER Officer explained to A.A. and her union representative that since the matter was investigated under the State Policy complaint, there was no need to also have a grievance hearing on the same matter. It is noted that a matter could still be grieved even if the matter is not a State Policy violation because the standards are not the same. However, it is also noted, as stated above, that the SPB's decision to not request that the subject District Parole Supervisor/Lieutenant eligible list be extended complied with Civil Service law and rules because there were no vacancies at the time the list expired. In other words, A.A. allegations cannot be substantiated as she has not provided any evidence to support her claims and 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 23RD DAY OF AUGUST, 2023

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