



STATE OF NEW JERSEY

In the Matter of P.P., Department of
Human Services

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

CSC Docket No. 2023-2364

Discrimination Appeal

ISSUED: October 11, 2023 (SLK)

P.P., a Vocational Rehabilitation Counselor 1, Deaf Language Specialist with the Department of Human Services, appeals the determination by an Assistant Commissioner 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, P.P. alleged that M.W., an Assistant Division Director, discriminated against him by assigning him a Driver Aide who involved him in a motor vehicle crash, directed another supervisory employee to discipline employees with disabilities, and harassed employees with disabilities with improper threats of discipline. Additionally, P.P. alleged that A.G., a Supervising Community Program Specialist, and J.A-S., a Program Specialist 3, Social Human Services, falsified disciplinary charges against him, and denied him accommodations that he needed to participate in a telework program. Finally, P.P. alleged that the Commission for the Blind and Visually Impaired (CBVI) denied him a reasonable accommodation of tactile American Sign Language (ASL) interpreters. However, the investigation was unable to substantiate any of P.P.'s allegations.

On appeal, P.P. requests that the investigation be re-done in person, and his witnesses be allowed to submit testimony and supporting evidence. He explains that he requested an in-person investigation so that he could clarify any misunderstandings. However, P.P. asserts that his request was denied even though

the investigator did not cite any policy. He claims that the investigator bullied him into conducting the investigation by email and stated that he could appeal later. P.P. states that the investigator complained that the investigator had to work while on medical leave. He indicates that some of his charges and most of his witnesses were ignored. P.P. desires an impartial investigation, and an investigation into the practices implemented by this investigator and P.P.'s superiors.

In response, the Equal Employment Opportunity (EEO) office presents that the investigator conducted 12 interviews and reviewed at least 17 relevant documents. It indicates that P.P. alleged (Allegation One) that M.W. discriminated against him on the basis of disability by assigning A.E. to drive him. A.E. was driving P.P. when an automobile accident occurred, which resulted in injuries to him. The EEO provides that P.P. is deaf and blind and cannot drive. It presents that on two occasions after the accident, A.E. was assigned to drive P.P. The EEO states that after P.P. complained the first time, a different driver was assigned. It submits that after P.P. complained about A.E. being assigned to drive him the second time, he was permitted to work from home. Further, since the motor vehicle accident, A.E. has not driven P.P. The investigation revealed that Driver Aides are assigned according to availability, and the CBVI attempted to accommodate P.P. by allowing him to use different Driver Aides and to work from home when a conflict arose. Therefore, the investigation was unable to substantiate the allegation as there was no evidence to corroborate P.P.'s claims that M.W. or anyone else discriminated against him regarding the assignment of Driver Aides.

Additionally, P.P. alleged (Allegation Two) that M.W. directed T.E., the mother of A.E., to discipline employees with disabilities. The EEO presents that when P.P. was questioned for more information about this allegation, P.P. provided only one example, an employee who he said was disciplined for calendar issues. However, P.P. admitted that A.E. did not refer him for discipline. He also alleged (Allegation Three) that M.W. improperly threatened employees with disabilities with discipline. P.P. acknowledged that M.W. did not threaten him with discipline, but he claimed that nine other named employees with disabilities were threatened with discipline. Among the seven witnesses who responded, all denied that they were threatened with discipline by M.W., although one complained about M.W.'s management. Among the two witnesses that did not respond, one had been issued a Written Warning in August 2022 for failing to complete her calendar two weeks in advance so that drivers could be coordinated. Therefore, as there was nothing improper about the warning and there was no other evidence to support the allegation, the EEO could not substantiate the allegation.

Further, P.P. alleged (Allegation Four) that A.G. and J.A-S. falsified charges against him related to a scheduled Zoom meeting with three parties. The EEO presents that during the meeting, P.P. attempted to communicate using ASL exclusively, and A.G. and J.A-S. referred P.P. for discipline for failing to notify them

he would only use ASL when neither of them could interpret it, and he failed to use other forms of communication, such as Zoom Chat or verbal communication, which he had previously used with them. While P.P. did not specify the specific nature of the alleged falsification, he provided information about two ASL interpreters who were available to demonstrate that the respondents were guilty of falsification. However, P.P. did not answer questions asking if he informed the respondents that he would be communicating in ASL exclusively and why he did not communicate verbally. Instead, P.P. said that he could not understand any communications during the Zoom meeting, and he sent the investigator a screen shot of a Chat message from the Zoom meeting saying, "We have Kathy and Craig on standby if you want them to join the meeting." Kathy and Craig are ASL interpreters. J.A-S. indicated that she is blind and cannot access ASL. J.A-S. also said that A.G. informed P.P., verbally and via Chat, that ASL interpreters were available, but he did not respond. J.A-S. said that P.P. responded by requesting tactile interpreters, but the request was denied due to the meeting being scheduled for 45 minutes, and P.P.'s Americans with Disabilities Act (ADA) accommodation only provides for tactile interpreters if the meeting is over an hour. J.A-S. also provided that P.P. previously communicated verbally on FaceTime and Zoom, and he has previously successfully used Chat before with magnification software. A.G. said that she supervises J.A-S. who supervises P.P. A.G. indicated that a Zoom meeting was scheduled for her, J.A-S. and P.P. to address P.P.'s work-related deficiencies where P.P. signed into the meeting, but only used ASL to communicate; however, J.A-S. cannot access ASL because she is blind. Further, A.G. only has rudimentary understanding of ASL, and she could not understand him because he was signing too fast. A.G. indicates that P.P. can communicate verbally and by using Chat, but he chose not to do so for some unknown reason. A.G. noted subsequent meetings where P.P. successfully communicated orally with FaceTime and Zoom. Moreover, A.G. told P.P. verbally and via Chat that two ASL interpreters were on standby, but he did not respond in a way that either she or J.A-S. could understand. The investigation revealed that a disciplinary hearing was held regarding this incident, and the hearing officer recommended that the charges and penalty be upheld.

The EEO presents that P.P. alleged (Allegation Five) that he was never provided the necessary accommodations to work from home. He accused A.G. and J.A-S. of disability discrimination. A.G. said that P.P. requested and received dual monitors, a docking station, keyboard, mouse, video phone, and tactile ASL interpreters (when available) at his home for teleworking. The investigation revealed that P.P. admitted no one denied his application for telework, and he is working from home. Further, A.G. said that she did not have authority to approve or deny reasonable accommodation requests. She said that P.P. has been provided everything he requested except full-time tactile interpreters, which are not available. She stated that she believes that P.P. would benefit from a larger monitor, and she supports this request. Further, A.S., the ADA Coordinator, wrote to P.P. with a list of accommodations provided to him. The EEO found that the list appears to meet all

his requests, except for Apple products, which the CBVI cannot procure due to contractual reasons. P.P. alleged (Allegation Six) that the CBVI denied him a reasonable accommodation of tactile ASL interpreters. However, the investigation revealed that the CBVI never denied him the use of a tactile interpreter as the CBVI attempted to hire tactile interpreters, but this type of interpreter is rare and therefore difficult to contract. However, the CBVI provides them when operationally feasible and when available.

Concerning P.P.'s request to redo the investigation, the EEO asserts that it conducted a thorough investigation. Further, while P.P. indicates that he requested an in-person investigation to avoid any misunderstandings, he has not explained what misunderstandings occurred because the investigation was performed via telephone and electronically. The EEO provides that it since COVID-19, most investigations have been performed remotely due to health concerns and the tools to be able to successfully perform remote investigations. Additionally, the EEO states P.P. does not state which witnesses allegedly did not submit testimony, supporting evidence, or were otherwise ignored.

In reply, P.P. presents that the CBVI has an employee with no prior experience or training working as ASL Interpreter Coordinators, whose only training is from J.A-S. and A.G. who have no experience as Interpreter Coordinators. He states that he can provide witnesses who can address the issues working with the CBVI concerning late payment, confusing scheduling, and forgetting to cancel sessions. P.P. provides that when employees moved to remote work due to the pandemic, the CBVI suspended his tactile ASL accommodation while the Division of Deaf and Hard of Hearing (DDHH), which is also part of the Department of Human Services, sent him tactile ASL interpreting so he could participate in their Advisory Council meeting. Therefore, he questions why the CBVI cannot provided him tactile interpreting. He presents that during the summer of 2020, his performance stumbled as his visual health deteriorated. He submits emails from A.G. where she acknowledges that he has eye strain and hearing aid struggles. P.P. states that in August 2022, J.A-S. and A.G. required him to attend a meeting where they were aware of his broken hearing aids, eye strain, and requests for tactile ASL interpreting. He claims that J.A-S. and A.G. lied to justify his 10-day suspension, which led to the removal of A.G. from CBVI services. He indicates that they knew that he was unable to read the chat and hear conversation, and he needed tactile ASL to participate. Further, he presents that there were interpreters on standby if they wanted to understand him. Additionally, they denied him paid time off to rest his eyes, which led him to take Family and Medical Leave Act (FMLA) leave to rest his eyes from September 2020 through March 2021. Further, during this meeting, it was the first time they used Zoom, and he had no training on it. Additionally, he notes that even individuals without an eye condition like his can get "Zoom Fatigue," and he asserts that this condition is much worse for him. Moreover, he doubts that A.G. is not competent using ASL since she has a twin sister who is deaf who communicates

with ASL. He contends that J.A-S. emailed the interpreters about the unusual practice that they would employ that day, and the “fact” that A.G. is no longer an employee, solidifies his position that the plan for the day was premediated.

P.P. states that he was reprimanded for pointing out to A.G. the flaws in the interpreter coordination system that was being used. Further, when the interpreting coordination system failed, A.G. emailed him to help fix it. He indicates that his title is Vocational Rehabilitation Counselor 1, Deaf Language Specialist. P.P. provides that while being a Vocational Rehabilitation Counselor is common, the Deaf Language Specialist part is rare, which is a linguistic requirement to ensure the ability to communicate with consumers who use ASL as their primary language. He notes that at the CVBI, employees are not required to submit proof of their linguistic abilities, which he has done several times. P.P. asserts that there is an employee who was promoted Vocational Rehabilitation Counselor 2, Deaf Language Specialist, who cannot pass the linguistic test that her title requires. He claims that this employee has been provided more professional opportunities than him and her poor ASL skills have cost the agency significant amounts of money by providing her ASL interpreters despite her not qualifying for an accommodation and her title requiring her to possess a minimum competency.

P.P. presents that he was approved to participate in the telework program in June 2022, but he did not receive his agreed upon equipment until April 2023. He states that during this time, A.S., a Manager 1, Human Resources, and T.M., a Manager 2, Human Resources, belittled his need for accommodation and referred him for discipline while withholding his telework accommodations. P.P. indicates that the investigator misunderstood his claim in this regard, as it was T.M. and A.S. and human resources who were responsible for his telework approval and ADA accommodation equipment and not A.G. and J.A-S.

P.P. contends that contrary to the EEO determination, he was denied access to tactile ASL interpreters as an accommodation from March 2020 through June 2021. He asserts that his personnel record was unblemished until he was denied the use of tactile ASL interpreters. Further, while the investigation states that tactile ASL interpreters are rare, he presents that in Deaf/Blind services, it is common. Also, P.P. contends that it is not difficult to contract tactile ASL interpreters, and there is no shortage of tactile ASL Interpreters. Instead, it is only due to CBVI’s staff lack of education, training, and willingness to improve their process that it is having a problem contracting them and other divisions have no issues hiring them.

P.P. states that he has been harassed since 2019. He provides that in September 2019, he sent an email to his peers expressing concerns that since A.G. and J.A-S. are close friends, this could be a professional conflict. Thereafter, he filed a favoritism complaint and has been retaliated ever since. P.P. presents that H.C., a Vocational Rehabilitation Counselor 2, is a former CBVI supervisor who stepped

down due to the targeting and harassment she witnessed by A.G. Therefore, when H.C. was uninterested in being a supervisor, A.G. was able to promote her friend J.A-S. despite her having no supervisory experience, no Deaf/Blind services experience, and her having failed at every role at CBVI, except as a Business Relations Specialist, which has no productivity standards. Additionally, he states that J.A-S. was promoted over V.A., a Principal Community Program Specialist, who had more relevant experience. He contends that others wanted to complain, but they chose not to due to fear of retaliation.

P.P. asserts that this harassment prevents him from obtaining a promotion. He indicates that he has yet to work under supervisors who have experience with Deaf/Blind individuals who understand how to properly accommodate him. While the CBVI advertises services available to Blind, Visually Impaired and Deaf/Blind consumers, he states that the CBVI does not have curriculum or training for new staff, which is the central theme of his hostile work environment claim. He submits a letter from C.M., an Assistant Division Director, which he contends supports his claims regarding CBVI's system failures. P.P. indicates that he met with C.M. and J.A-S. requesting a change in leadership for him. At first, C.M. denied his request. However, he states A.G. has since been removed due to her actions against him and C.M. now believes that P.P. has been discriminated against and has expressed interest in keeping him employed at the CBVI.

P.P. provides that in 2023, his work has primarily consisted of self-advocacy and defending himself from attacks from management. Further, in the summer of 2022, human resources attacked his need for accommodation and mocked him. Additionally, while T.M. did not intervene, A.G. requested to work with him to develop updated accommodations, which were then submitted to human resources. Subsequently, after he received a concussion from a car crash while on duty, his request for tactile ASL interpreters was removed from his accommodations while he had a head injury that kept him out of work for four months. He states that human resources is untrained and uneducated on how to accommodate him. P.P. notes that there was a delay in him receiving Workers Compensation and he had to use paid time off due to human resources' and A.G.'s mishandling of this. Further, P.P. presents that he changed banks twice and there were issues with him receiving his direct deposit. However, instead of human resources taking responsibility, it blamed him.

Additionally, P.P. states that M.W. controls the employee access to staff drivers. He learned that the driver who caused his accident was promoted from a part-time to a full-time position, while in the past, drivers who caused accidents were suspended or taken off the road for extended periods of time. He notes that this driver's mother is a supervisor in the same office as the driver. P.P. indicates that when he returned from his injury, M.W. at first, assigned him the same driver, which led to him requesting a different driver. Although he was assigned a new driver, two

weeks later, the same driver who caused the accident was assigned to him. P.P. asserts that there was another driver, C.H., who was in work status that date who was unassigned, but M.W. chose to assign C.H. to someone else and the driver who caused the accident to him. He states that the investigator did not interview C.H. Although he was informed that there was nothing that could be done about the driver assignment, human resources informed him he could work from home. P.P. asserts that M.W. has made significant changes to the driver policy and more than 40 employees with disabilities are organizing against these changes.

P.P. asserts that his hostile work environment issues have not been addressed despite reporting issues to his supervisor, manager, employee relations personnel, and members of the executive management team. Instead, he indicates that disciplinary hearings were scheduled to take place in July 2023 to determine if he would be terminated. He states that within the CVBI, there is minimal training and education on supporting Deaf/Blindness, which has resulted in systematic ableism.¹

In further response, in regards to the allegation where P.P. accused M.W. of scheduling a driver who had injured him during an automobile accident, the EEO states that the driver in question has not driven P.P. since the date of the accident. Concerning allegations against A.G. and J.A-S., it indicates that while P.P. claims that A.G. was removed from her position due to her behavior in connection with P.P.'s case, there is no evidence to support such a claim as A.G. is still employed, and she is on a six-month reassignment which she requested. Further, regarding the use of Zoom during an August 2020 meeting, this practice had been in place since March 2020. Therefore, the EEO doubts this was the first time that P.P. used Zoom. Also, while P.P. claims that J.A-S. emailed interpreters about the alleged unusual practice for that meeting, he does not provide any emails to support this statement. Additionally, the EEO questions how if P.P. could not read the Zoom Chat, how could he know that interpreters were on standby. Moreover, the EEO asserts that P.P. was given reasonable accommodations so that he could participate in telework and there is no evidence that A.G. and J.A-S. discriminated against him to prevent his participation. It also highlights that while C.M.'s letter indicates support for P.P.'s continued employment, contrary to P.P.'s assertion, it does not in any way indicate that he believes anyone discriminated against P.P. Also, the EEO provides that claims regarding another employee's linguistic abilities should not be considered as he did not mention this in his complaint with the EEO. Further, A.S. and T.M. were not respondents in the original allegations. The EEO highlights that most of P.P.'s accommodation requests have been provided and only reasonable accommodations need be provided. However, while the CBVI has attempted to contract tactile interpreters, it has been unsuccessful in its attempts. Additionally, the CVBI cannot provide certain Apple products due to contractual reasons. Concerning P.P. allegations that he has been retaliated against for his complaints, the EEO states

¹ Ableism is generally defined as discrimination in favor of able-bodied people.

that P.P. has provided no evidence that he was retaliated against or that others in the unit feared retaliation.

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 disability will not be tolerated. *N.J.A.C.* 4A:7-3.2(n)1 provides that the burden of proof shall be on the appellant.

Concerning Allegation One where P.P. alleged that M.W. discriminated against him on the basis of disability by assigning a driver to him that had been his driver in a prior accident, while P.P. claims that there was another driver who was available when the driver that was involved in the accident was assigned to him a second time, even if this is true, there is no evidence in the record that this assignment was meant to discriminate against or otherwise retaliate against him. Further, this driver did not actually end up driving P.P. afterward, and P.P. now teleworks.

Regarding Allegation Two where P.P. alleged M.W. directed T.E., the mother of the driver during P.P.'s accident, and Allegation Three where P.P. alleged that M.W. improperly threatened employees with disabilities with discipline, P.P. acknowledged that M.W. did not threaten him with discipline. Further, none of the employees that he claimed were threatened confirmed the allegation, and the investigation revealed that the one Written Warning that was issued to one of these employees was valid.

Referring to Allegations Four, Five, and Six, P.P. in essence alleges that due to his Deaf/Blindness, he was not given the proper environment to successfully telework. Specifically, P.P. indicates that to properly communicate remotely during meetings, he needs tactile ASL interpreters as well as other equipment. Further, because he was unable to communicate because he did not have the set-up he needed, he was unfairly disciplined for not communicating during a remote meeting. However, the record reveals that he was provided much of the equipment that he requested, and the only equipment that was not provided was due to the fact that the State contract did not support Apple products as he requested. Further, the CVBI indicates that it tried to provide him tactile ASL interpreters, but it was not providing them due to COVID-19 protocols and/or it was unsuccessful in its attempt to secure them due to their scarcity. While P.P. provides documentation that another division within the Department of Human Services was providing tactile ASL interpreters during COVID-19 at people's homes and then it has been able to contract for these interpreters, this is not evidence that the CVBI was retaliating against P.P. or

otherwise attempting to discriminate against him due to his disability. In fact, P.P. alleges that the CVBI's failure to provide tactile ASL interpreters was due to staff's lack of training and education on supporting Deaf/Blindness, which even if true, does not signify that staff was retaliating or discriminating against him. Moreover, the Civil Service Commission (Commission) makes no determination as to whether past or current discipline against him is appropriate and that is to be determined in the appropriate forum. Further, while P.P. submits a letter from C.M. which he claims indicates that C.M. supports his discrimination claim, the statement only indicates that he supports P.P.'s continued employment and does not in any way suggest that C.M. supports his discrimination claims. Additionally, while P.P. claims that A.G. was removed from employment due to her treatment of him as evidence of discrimination, the record indicates that A.G. is still employed and on voluntary reassignment, and there is nothing in the record to suggest that her alleged treatment of P.P. has anything to do with the reassignment.

In this matter, while P.P. claims that not all his witnesses were interviewed, he has not submitted one statement from any witness or other evidence that the reason that any CBVI staff or Department of Human Services employee has taken any action was to retaliate against him or to otherwise discriminate against him on the basis of his disability. Mere speculation, without evidence, is insufficient to support a State Policy violation. *See In the Matter of T.J.* (CSC, decided December 7, 2016). Further, P.P. states that the central theme of his hostile work environment claim is that the CBVI does not have the curriculum or training for new staff regarding Deaf/Blindness. In other words, P.P.'s main complaint is that he disagrees with how the CBVI manages the organization. However, 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). Moreover, under Civil Service law and rules, there is no requirement that an investigation be conducted in-person, and it is at the EEO's discretion as to how the investigation should be conducted. Further, there is nothing in the record to suggest that in-person interviews or interviewing additional witnesses would change the outcome of the investigation. Therefore, there is no basis to remand this matter to the EEO for further investigation as P.P. requests. Accordingly, the Commission finds the appointing authority's investigation to be prompt, thorough, and impartial in compliance with the State Policy.

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 11TH DAY OF OCTOBER, 2023

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