



**STATE OF NEW JERSEY**

In the Matter of S.R., Department of  
Human Services

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

CSC Docket No. 2023-1778

Discrimination Appeal

**ISSUED: August 2, 2023 (SLK)**

S.R., a Quality Assurance Specialist, Health Services (QAS) with the Department of Human Services, Division of Aging Services (DoAS), appeals the determination of an Assistant Commissioner 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, S.R. who is now 65, alleged that E.B, an Assistant Division Director, denied her a promotion because of her age. She also complained that she did not receive notice of a job posting while on Family Medical Leave Act (FMLA) leave. In addition to filing a complaint with the Office of Equal Employment (EEO), she also filed a complaint with the Division on Civil Rights. Regarding S.R.'s allegation the E.B. failed to notify her of a job posting while she was on FMLA leave, the investigation revealed that human resources notified her by email of the posting, which was the standard procedure at that time, and personal service was not required. Further, S.R. admitted that she did not check her emails on return from leave. Concerning S.R.'s allegation that E.B. denied her various promotional opportunities because of her age, S.R. presented a younger employee who was promoted. However, the investigation revealed that this employee was promoted because of a Civil Service rule. Moreover, S.R. did not apply for the position until after the posting was closed. Additionally, while S.R. presented alleged statements from a supervisor indicating that there was a conspiracy to deprive her of promotions due to her age, the supervisor denied hearing the statements and making the

statements to S.R. Also, an investigator and a hearing officer from a grievance hearing could not find anything improper. Referring to allegations regarding Job Postings #180-15 and #229-1, it noted that these documents were beyond the retention period and were unavailable to be examined. Regarding Job #020-18 for Quality Assurance Coordinator (QAC), the eligible list promulgated on January 23, 2020, and expired on January 23, 2023. The posting was sent to all Division units with instructions to post it on bulletin boards, which was the notification process at that time. The investigation revealed that S.R. did not apply, and the appointments were made in compliance with Civil Service law and rules and the appointing authority had no authority to retroactively add her name to the list. Concerning Job #322-20, this was a Division of Medical Assistance and Health Services posting, which was suspended due to Covid-19 and no appointments were made. Referring to Job #501-22D, it presents that this was a Division-wide posting where the posting was emailed in January 2022 and reposted in February 2022 to obtain more applicants. The appointing authority indicated that S.R. was on leave from February 2, 2022, to March 20, 2022. However, S.R. expressed no interest and did not apply in January 2022, and she had internet access when she returned to work and access to the reposting, but she did not apply to the reposting until July 2022, four months after returning and after the posting closed. The appointing authority also noted that E.B. approved a request to promote S.R. from Regional Staff Nurse to QAS in October 2022, which was approved by human resources in May 2021, and S.R. was ultimately promoted after an examination. Finally, while S.R. alleged that she was working out-of-title as a QAC, personnel records did not indicate that she ever worked in that title, there was no evidence that she performed the duties of a QAC, and she never filed a classification appeal. Therefore, the appointing authority could not substantiate her allegations.

On appeal, S.R. presents that she is alleging a pattern of age discrimination and not a single event. She indicates that she started as provisionally serving as a QAS on July 14, 2014, and by July 2015, she should have been given permanent status since she was a full-time Lead Reviewer and a provisional appointment is not supposed to be more than 12 months under Civil Service law and rules. Further, she states that she was sent an email about applying for the QAS position #229-15<sup>1</sup>; however, she was advised that she was not be eligible to apply because she lacked the required permanent status, which led to S.P. being appointed, effective March 3, 2017, to this title from the QAS promotional examination (PS1180K)<sup>2</sup>, which had a September 21, 2016 examination closing date. S.R. states that S.P. is 12 years younger than her, and she believes that this was the start of the age discrimination

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<sup>1</sup> This would appear to be a posting for a vacancy announcement for a provisional QAS position. S.R. also applied for a prior vacancy announcement for a provisional QAS position. Job #180-15.

<sup>2</sup> It is noted that S.P. had been a permanent Regional Staff Nurse Medical Assistance since October 5, 2013. Further, S.R. had been a permanent Regional Staff Nurse Medical Assistance since July 11, 2015, and, therefore, she had the required one-year permanent service by the September 21, 2016, PS1180K examination closing date. However, S.R. did not apply for this examination.

against her. However, although she asked to be promoted, it took her six years to be promoted to QAS. She submits documentation that indicates that the Lead Reviewer should have the QAS Civil Service title, and she believes that this document proves that she was discriminated against.

Regarding not being notified about a job posting while on FMLA leave, her State computer and phone had to be left in the office starting February 1, 2022. She presents that the promotional announcement was posted from February 10, 2022, to February 24, 2022 and, therefore, she could not view the posting because she was on leave with no access to State email. S.R. presents that *N.J.A.C. 4A:4-2.1(b)* provides that all appointing authorities shall notify eligible employees by electronic or other means concerning an announcement; yet although E.B. was aware that she was on leave without access to State email, she was not notified by other means. Additionally, upon her return to the office on March 21, 2022, she did not have access to a computer and she did not review her emails until March 28, 2022. S.R. asserts that due to the amount of emails and other job demands, she did not discover the opening until after it was closed, and she was not afforded an opportunity to apply. She questions why the announcement was not provided to her upon her return in late March 2022. Therefore, she believes that she was discriminated against due to her FMLA leave.

S.R. notes that she is the oldest nurse in her region and the youngest nurse in her region was 20 years younger than her, with no State supervisory experience, and was promoted ahead of her, which is further evidence of age discrimination. S.R. states that, when she asked L.M., a Program Manager Health/Human Services, if it was a coincidence that she was not notified about the position while on FMLA leave and did not have access to State systems, she replied, "it was not a coincidence" and L.M. expressed that she felt that S.R. was being treated unfairly. Concerning her grievance, while the hearing officer only talked about the January 2022 posting, she had the right to apply to the February 2022 posting. S.R. asserts that she has made many attempts to apply for promotions over the years. She claims that being on FMLA has had a negative impact on her career due to discrimination as she has been treated differently as she would have been notified if she had been in the office. S.R. presents another individual who did not get the position in favor of a much younger employee with a lower title and no State supervisory experience, which she cites as another example of age discrimination. She cites several issues that she has with comments on her Performance Assessment Review (PAR) which she wanted changed. She claims that the distorting of her positional responsibilities by E.B. on her PAR is another example of her discriminating against her because of her age and FMLA status. S.R. indicates that her position was always known as Lead Reviewer, but she believes that it was changed to Team Lead to diminish the supervisory role that she had in the Lead Reviewer position and an attempt to portray her as an aged employee with no capacity or leadership capability. Further, S.R. highlights that E.B. was never involved in making comments on her PAR until after the grievance hearing.

She claims that there has been a pattern of discrimination by E.B. and others against her. S.R. requests back pay at the R29 salary range for certain periods, her Civil Service title be revised to QAS back to 2016, and other damages.

S.R. also submits personnel listings from 2014 to 2021 with analysis of alleged age discrimination by E.B., Civil Service titles with the descriptions of the promotions granted by E.B. of younger employees, a May 2, 2022 email listing her extra duties that she performed while filling in for the Administrative Manager and job responsibilities that would be part of the future Manager position, an extended answer to the determination letter, testimony from the hearing officer report where a nurse testified that L.M. told her to apply for the QAC position in the South Regional Office in February 2022, which she did and was interviewed, a May 3, 2023, email that indicates that S.R. was working under L.M., and a 2016 job description of positions in the Community Choice Options Regional Office including Lead Reviewer, QAS.

In response, the EEO presents that the investigation revealed that S.R. acknowledged that she did not complete PARs and she never requested that the classification of her position be reviewed for out-of-title work. Further, she admitted that she never applied for the original #501-22D posting although she was not on leave at that time. Additionally, when S.R. returned from leave on March 21, 2022, after having technology issues for a week, she admitted she did not check her email for a period of time after the technology issues were rectified as she did not express interest in #501-22 until July 2022, after the position had been filled.

Regarding L.M., the investigation revealed that she denied knowing of any actions taken by E.B. to deny S.R. supervisory opportunities because of her age, and she denied telling S.R. that she was set-up and stating that it was no coincidence that the reposting was made while S.R. was on leave. She also denied that S.R. was working out-of-title.

Concerning E.B., she admitted that she made the hiring decisions regarding the reposted #501-22D position. However, she denied knowing the process for notifying the employees on leave, and she said that the job was posted by email to Division staff. Further, E.B. denied that there was a plan to exclude S.R. from promotional opportunities. Also, E.B. presented that a request was made to promote S.R. to Regional Staff Nurse to QAS in October 2020 which was approved by human resources in May 2021, and which ultimately led to her promotion. Regarding the employees who were provisionally appointed to the supervisory positions., E.B. explained that they “invoked the rule” for an incomplete list as the list only consisted of two employees, and under Civil Service rules they could be appointed. E.B. indicated that she had no information regarding Jobs #180-15 and #020-18. and human resources, and not her, determined that S.R. was not eligible for Job #229-15. E.B. stated, regarding S.R.’s designation in PAR reviews as a Lead Reviewer, no

change had been made to S.R.'s working title and no decisions were made because of S.R.'s age.

J.M., a Personnel Assistant 1, was interviewed, stating that 2015 postings were beyond the retention period and she did not have any information about them. Additionally, she doubted that Job #020-18 was a DoAS announcement and Job #322-20 was not a DoAS posting, but it was a Division of Medical and Health Services position, which was suspended due to Covid-19 and no appointments were made. Regarding #501-22D, she indicated that it was a Division-wide posting, which was originally posted in January 2022 and reposted in February 2022 in an attempt to obtain more applicants. She explained that the position that S.R. expressed interest in, the Reviewer position, was filled from a certification and not from the January and February 2022 vacancy job postings. J.M. noted that she explained to S.R. on multiple occasions that if the person on the certification invoked the rule in June 2022, that person had to be considered for appointment before anyone not on the list, and human resources agreed to accept her resume if the persons on the certifications had declined. J.M. provided that prior to the person on the certification list invoking the rule, two provisional appointments were made from the job openings, one was a Field position and one was in the Quality Assurance unit. Further, when S.R. reached out to human resources about the Reviewer position, which was filled using the certification, she was not considered because she did not apply by the closing date as she only expressed interest in July 2022, and the Reviewer position was filled using the certification. J.M. emphasized that even if S.R. had not been on leave and had applied to the January and February postings, she would not have been considered for the Reviewer position because she was not on the certification.

Referencing S.R.'s grievance hearing, the hearing officer found that there was no basis for her grievance regarding posting #501-22D for the same reasons as indicated above. Further, there was no evidence that she was working out-of-title as a QAC or that she performed the duties of a QAC such as evaluating personnel or approving timesheets. Concerning a promotional announcement for QAC that was issued on July 1, 2018, the announcement was issued in compliance with Civil Service rules and the DoAS had no authority to place her on the list retroactively. Also, as S.R. was not in a QAS position in 2018, she would not have been eligible for the QAC position since it required five years of experience.

Therefore, the EEO did not substantiate the allegations that E.B. discriminated against S.R. because she was on FMLA leave as S.R. was sent email notification for the job postings, which was the standard practice at the time, and she was not required to be personally notified. It also did not substantiate that E.B. discriminated against her due to her age, as S.P. was promoted pursuant to Civil Service rules and S.R. did not apply for that position until after the posting closed. Moreover, L.M. denied making the alleged statements that S.R. said she made as

described above. The EEO asserts that there is not a scintilla of evidence to support S.R.'s claims.

In reply, S.R. states that the DoAS took away her electronic access to State email while she was on leave and L.M. and E.B. were fully aware of this. She asserts that it does not make sense that E.B. was not aware of her responsibility to notify her of the position while she was on leave. She claims that since L.M. personally told another employee to apply and L.M. had her personal contact information while she was on leave, she was treated differently. S.R. states that even though she did not apply to the January posting that it does not signify that she did not have the right to apply to the February posting. She questions why if the position was reposted to get more candidates than why was she not personally asked to apply like other candidates. She believes that the process was to ensure that the youngest candidate was appointed. Further, she never expressed that she was not interested in provisional appointments as the DoAS contends. Also, she questions why the DoAS did not ask this agency to add her to the list for the QAC position in July 2018. She claims that the QAC Review Manager position that was announced on June 30, 2022, was very similar to the position that she had been performing for eight years, and when the QAC Review Manager position was appointed from a certification, this meant that she was being replaced by a person that she felt was less qualified than her. She claims that the July 2018 position was posted in an unfair manner as it should have been emailed. S.R. states that E.B. knew that she was performing out-of-title work for six years and did nothing to help her. She contends that her analysis of the alleged age discrimination demonstrates that E.B. discriminates based on age, and she notes that the EEO did not even address her analysis. S.R. asserts that the DoAS' failure to revise the comments on her PAR as she requested was cruel. Concerning why she did not read all her email when she returned from leave, she had volumes of email and a lot of work and she questions why she could not have just been told like other nurses about the announcement. S.R. states that it is disappointing that L.M., who she thought was her friend, would deny the remarks she told her. She reiterates that three younger employees with less experience than her were promoted instead of her. S.R. states that not only did DoAS not follow Civil Service rules while she was on leave, but it did not follow FMLA rules as she was supposed to be treated like every other employee. She argues that E.B.'s provisionally appointing someone for the QAC position in March 2022 before she came back from FMLA is discrimination as she was being treated differently than other candidates.

In further response, the EEO reiterates that its investigation did not reveal that she was discriminated based on age or FMLA status. Further, E.B. submitted a request to promote S.R. from Regional Staff Nurse to QAS, which was approved. It emphasizes that the mere fact that younger employees were promoted instead of her does not, without other evidence, signify that S.R. did not receive promotions due to her age. Instead, the record indicates that the younger employees were promoted

because they timely filed for Civil Service examinations and then were promoted after their names were certified.

In further reply, S.R. reiterates her prior arguments. She also highlights employees who were 57 and 60 years old who were not promoted as well as herself despite their experience and qualifications. Concerning the EEO's statement that the promoted employees timely filed, she emphasizes that she was on leave, so she could not have access to the February 2022 posting, and the 2018 posting was not posted in a manner where she became aware of the announcement in timely fashion.

S.R. summarizes that her appeal is based on disparate treatment. She believes that her older age was the sole reason that she did not receive promotions as she had more experience than the younger employees who were promoted and she received no justification for her non-promotions. S.R. contends that she was working out-of-title for six years. She asserts that she supported her claim when she described other experienced older employees who were treated the same, and in February 2022 she was not even considered for a provisional promotional appointment where she alleges that there was a directive to prevent her from viewing promotions and managers who deliberately did not tell her about the positions while she was on leave. She argues that the employees did not follow the law. S.R. submits a letter from the Division on Civil Rights where it determined that, given the likelihood of success on the merits after a full investigation and/or hearing, the public interest was not served by continuing the investigation, and since the Division had not reached a determination based on the merits, she could proceed with a complaint in Superior Court, subject to the two-year statute of limitations. She states that, based on her strong evidence, she cannot imagine how the Division on Civil Rights came to this conclusion.

## 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 age and disability 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 Civil Service Commission (Commission).

In this matter, S.R. alleges that E.B. has not provisionally and permanently appointed her to supervisory positions due to her age and because she was on leave. However, the record indicates that S.R. was not permanently appointed to a supervisory position because she did not apply for the position in 2018. While S.R. complains that she was not aware of the Civil Service announcement until after the

closing date, there is nothing in the record that suggests that the announcement was not posted in compliance with Civil Service rules. Further, if S.R. believes that the announcement was not posted in compliance with Civil Service rules, she should have appealed then. Concerning the 2022 vacancy announcement, the record indicates that S.R. was aware of the posting in January 2022, but she chose not to apply. Further, while the announcement was re-posted in February 2022 and sent to her email, she was on leave at the time of the re-posting. However, although S.R. had access to her State email around the end of March 2022 when she returned from leave, S.R. did not review the email until July 2022, after the announcement was filled. S.R. argues that her lack of personal notification while on leave is a violation of Civil Service rules. It is noted that vacancy announcements for provisional positions are at the discretion of an appointment authority, and Civil Service rules regarding notification for announcements related to examinations for permanent appointments are not applicable. Further, S.R.'s excuse for not having noticed the provisional announcement until July 2022 because she had a lot of emails and work to catch up upon return from leave is not a valid reason to wait over three months before reviewing one's email. Nor does it establish that she was being discriminated against in any way based on her leave status. Additionally, the fact that L.M. may have personally asked an employee to apply for the subject provisional position does not signify that S.R. was treated differently or that E.B. purposely set up a process so that S.R. would be unaware of the re-posted announcement. Moreover, the record indicates that even if S.R. had timely applied for the subject provisional position, she would not have been appointed because there were employees who were on an incomplete eligible list for the subject title and these employees "invoked the rule." Therefore, under Civil Service law and rules, the DoAS had to provisionally appoint these employees, and S.R.'s age and leave played no role in her non-appointment.

Concerning S.R.'s allegation that she worked out-of-title for six years, there is nothing in the record that confirms her allegations as there is no evidence that she completed performance evaluations for other employees, which is the main duty that signifies that one has supervisory responsibilities, and S.R. failed to file a request for a review of the classification of her position with this agency, which is her responsibility if she believed she was working out-of-title. Finally, while S.R. claimed that L.M. told her that the re-posting of the subject vacancy announcement while she was on leave was a "set-up" and "not a coincidence," L.M. denied making the alleged statements, and S.R. did not present any confirming witnesses or other evidence, that any actions regarding her employment were made due to her age or leave. The mere fact that younger employees received supervisory positions while she did not, without more, is not evidence that her non-appointments were due to her age or leave. Mere speculation, without evidence, is insufficient to support a State Policy violation. *See In the Matter of T.J.* (CSC, decided December 7, 2016). Therefore, the totality of the record indicates that S.R. has not been considered for supervisory positions, not due to her age or leave, but due to her own inactions or other non-discriminatory reasons.



**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 2<sup>ND</sup> DAY OF AUGUST, 2023

*Allison Chris Myers*

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Allison Chris Myers  
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: S.R.  
Pamela Conner  
Division of EEO/AA  
Records Center