



**STATE OF NEW JERSEY**

In the Matter of J.C., Department of  
Banking and Insurance

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

CSC Docket No. 2024-799

Discrimination Appeal

**ISSUED: May 1, 2024 (HS)**

J.C., an Insurance Examiner 1 with the Department of Banking and Insurance, appeals the determination of the Assistant Commissioner, which found that the appellant failed to present sufficient evidence to support a finding that he had been subjected to a violation of the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy).

The appellant, a Hispanic male, filed a complaint with the Office of Equal Employment Opportunity and Affirmative Action (EEO/AA) against D.W., Deputy Executive Director, a Caucasian male, and O.D., Supervising Insurance Examiner, an African American female, alleging discrimination based on nationality and national origin. Specifically, the appellant alleged that the respondents recommended that he find training to develop effective communication skills and included “effective communication” in his Performance Assessment Reviews (PARs) due to his nationality, national origin, or accent and that O.D. harassed him based on his nationality, national origin, or accent by meeting with him to discuss his work. The EEO/AA conducted an investigation, during which individuals with relevant knowledge were interviewed and relevant documentation was reviewed and analyzed, and found no corroboration for the allegations. As such, the Assistant Commissioner did not substantiate any violations of the State Policy based on a protected category.

On appeal to the Civil Service Commission (Commission), the appellant states that he disagreed with D.W.'s Justification for Final Evaluation on his final 2022 PAR, which included the following language:

[The appellant] takes his work seriously and reflects a strong desire to do a good job and to complete his work in a timely manner. [The appellant's] communication with his supervisors and colleagues was ineffective at times; however, the overall rating was satisfactory when considering the entire year. Examples of ineffective communication include (i) [the appellant] participated in interviews for [Insurance] Examiner 2 positions which [were] overseen by [D.W.]. [The appellant's] initial response to this effort [was] not in line with the objective and needed to be changed; (ii) [the appellant] has sent emails to his supervisors and colleagues that were ineffective and using an inappropriate tone. This led to conflicts which may have been avoided through more effective communication.

Under the Final Development Plan, D.W. noted, "We will work with [the appellant] to find training opportunities to develop more effective communication skills."

The appellant also notes his disagreement with O.D.'s inclusion of the following essential criteria in his 2023 PAR, after she became his supervisor: "[e]ffectively communicate with the Department analysis areas" and "[b]e able to effectively communicate verbally and in written correspondence the progress of examinations and assist in the preparation or review of clear and concise examination reports containing findings, conclusions and recommendations." The appellant claims that O.D. included these criteria because she had accused the appellant of not wanting to be supervised by an African American female<sup>1</sup> and this was her way of maintaining control over the appellant.<sup>2</sup>

The appellant further maintains that O.D. is not qualified to be his supervisor in Office of Solvency Regulation (OSR) field examinations as she does not perform any duties of a supervisor in field examinations according to State law governing insurance examinations. Per the appellant, D.W. also stated that O.D. would not be supervising any of his fieldwork (signing off on workpapers), and that N.C., Certified Financial Examiner, would assume that responsibility even though O.D. was officially listed as his supervisor. The appellant argues that this arrangement will only breed confusion. In support, the appellant submits various exhibits.

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<sup>1</sup> Per the appellant, he had filed a complaint with the EEO/AA over O.D.'s accusation of racism, but the complaint was unsubstantiated.

<sup>2</sup> *N.J.A.C.* 4A:7-3.2(m)1 provides that employees filing appeals that raise issues for which there is another specific appeal procedure must utilize those procedures. Therefore, the Commission will not address, in this decision, the appellant's arguments pertaining to those allegations related to his PARs because a specific appeal procedure exists for those issues. See *N.J.A.C.* 4A:6-5.3.

In response, the EEO/AA maintains that O.D. is qualified to be the appellant's supervisor and that the appellant has otherwise not met his burden of proof.

In reply, the appellant insists that the arrangement whereby he in effect has two supervisors, N.C. and O.D., is discriminatory, and it has led to much aggravation and harassment, including a "boiling point" in spring 2023 when there was disagreement over how the conclusion and affidavit pages of examination reports under the appellant's direction were to be drafted. O.D., the appellant reiterates, does not stand on good, solid ground to issue a PAR and rate him on his job performance.

Additionally, the appellant argues that there is in fact evidence that O.D., in a discriminatory manner, recommended that he find training to develop effective communication skills. Specifically, he recounts that on October 5, 2022, he submitted a position review request via e-mail to O.D., who responded via e-mail as follows on October 7, 2022:

Your request has been reviewed. As I have only limited experience working with you, and no knowledge of your PAR, I do not believe it is feasible or fair for me to make the final decision regarding your request.

However, based on conversations you and I have had and observations made during that time I can offer the following for consideration. We briefly discussed some discomfort you had with preparation and presentation for some meetings. You have also mentioned, during several conversations, that you have primarily examined small New Jersey uncomplicated insurers which could be construed as contrary to the duties you describe as "extremely complex" in your request. I have provided the attached course description for your consideration in the development of more effective management skills in your pursuit to become a Supervising Insurance Examiner.

Please feel free to use me as a resource in your management progression within the department.

The "course description" O.D. provided was on the subject of face-to-face communication. The course was described as follows:

We use interpersonal skills to communicate and interact with other people, both individually and in groups. Effective face-to-face communication helps us: resolve differences, build trust, and have respectful interactions. As simple as communication seems, much of what we try to communicate to others, and what others try to communicate to us, gets misunderstood, which can cause conflict and

frustration. In this one-day course you will realize the impact of your communication skills and learn how to use your communication skills to better connect with management, coworkers, peers, and clients.

The learning objectives of the course were to: define communication; recognize benefits of effective face-to-face communication; develop skills to listen actively and empathetically; identify what your non-verbal messages are telling others; practice assertive situations; develop questioning skills; identify common communication problems; and demonstrate communications skills in difficult scenarios. The appellant contends that O.D. had mischaracterized what he thought was a warm telephonic conversation held in August 2022. The appellant recounts that he was describing how much examination operations had changed since 2002. One of those changes were interviews with C-level executives required by the new risk-focused examination framework that began to be implemented in 2010. The appellant explained that “such interviews can be unnerving but only get better after the first minute.” In support, the appellant submits various additional exhibits.

## CONCLUSION

It is a violation of the State Policy to engage in any employment practice or procedure that treats an individual less favorably based upon any of the protected categories. *See N.J.A.C. 4A:7-3.1(a)3*. The protected categories include race, creed, color, national origin, nationality, ancestry, age, sex/gender, 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. *See N.J.A.C. 4A:7-3.1(a)*. The State Policy is a zero tolerance policy. *See N.J.A.C. 4A:7-3.1(a)*. The appellant shall have the burden of proof in all discrimination appeals. *See N.J.A.C. 4A:7-3.2(m)4*.

The Commission has conducted a review of the record in this matter and finds that a thorough investigation was conducted and that the investigation failed to establish that the appellant was discriminated against in violation of the State Policy. Documents were appropriately analyzed, and individuals were interviewed in investigating the allegations prior to concluding that there were no violations of the State Policy. As noted, the investigation did not corroborate that O.D. recommended that the appellant find training to develop effective communication skills due to his nationality, national origin, or accent. On appeal, the appellant argues that this was in error and offers his October 2022 e-mail exchange with O.D. as evidence. The Commission is unpersuaded. The appellant acknowledges that in his prior conversation with O.D., he described the potentially “unnerving” nature of having to interview C-level executives. O.D., in her e-mail, noted that she had discussed with the appellant “some discomfort [he] had with preparation and presentation for some meetings.” As such, the e-mail exchange is not substantive evidence that

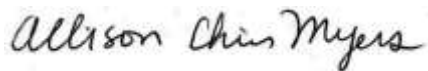
discrimination, as opposed to legitimate business reasons, more likely motivated O.D. to recommend the face-to-face communication course, which had, among its learning objectives, practicing assertive situations; developing questioning skills; identifying common communication problems; and demonstrating communications skills in difficult scenarios. As such, the October 2022 e-mail exchange cannot be taken as evidence of a flawed investigation. Further, the Commission acknowledges the appellant's insistence that O.D. is not qualified to be his supervisor in OSR field examinations or issue him PARs and that it is improper to have an arrangement whereby O.D. is his supervisor per the PAR system but N.C. signs off on his field work papers. However, no substantive evidence has been proffered that these disagreements implicate the appellant's membership in a protected category. 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). As such, the appellant's arguments over O.D.'s qualifications and the structure of his organization similarly cannot be taken as evidence of a flawed investigation. Accordingly, the investigation was thorough and impartial, and there is no basis to disturb the Assistant Commissioner's determination.

### 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 1<sup>ST</sup> DAY OF MAY, 2024




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