STATE OF NEW JERSEY

In the Matter of J.S., Department of Community Affairs CSC Docket No. 2025-2617	**FINAL ADMINISTRATIVE ACTION OF THE CIVIL SERVICE COMMISSION** Discrimination Appeal

ISSUED: December 17, 2025 **(HS)**

J.S., a Research Analyst 3,[1] Department of Community Affairs (DCA), appeals the determination of the 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).

As background, the appellant, an African American male, alleged that L.D., Regulatory Officer 4, and S.K., Program Specialist 3, discriminated against him based on color, race, sexual orientation, disability, and retaliation. Specifically, the appellant alleged as follows:

1. He was discriminated against and differentially treated based on his race during the hiring process and after accepting a "temporary"[2] position with the DCA. Specifically, he asserted that he interviewed

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[1] Agency records reveal he received an appointment to the unclassified title of Research Analyst 3, effective July 29, 2024.

[2] The offer for which the appellant accepted in April 2024 was a contract position. Pursuant to *N.J.A.C.* 4A:7-3.2(m), a contract employee does not have a right to appeal a discrimination determination by a State agency head or designee as only a complainant who is in the career, unclassified or senior executive service, or who is an applicant for employment in those positions, may submit an appeal. The allegations the appellant raised involved his appointment to the unclassified title of Research Analyst 3 and thereafter. Thus, he is entitled to file an appeal. However, if he remained as a contract employee, he would not have such a right.

for a "permanent"[3] position with L.D. and was offered a temporary position with less salary; whereas similarly situated non-African American applicants with less experience were offered permanent positions with higher salaries.

2. During a meeting with S.K., he was referred to as a "dummy," and on another occasion, S.K. communicated that the way he talks "doesn't sound good," which the appellant perceived as being race-based.

3. The appellant and an African American female temporary worker were required to work 8.5 to 9-hour shifts, whereas non-African American temporary workers were allowed to work 7-hour shifts.

4. The appellant was expected to complete tasks at an accelerated pace compared to non-African American peers. The appellant worked on the weekends at times and outside of work hours to complete tasks.

5. The appellant was discriminated against based on his disability in that he was not given the medical accommodation requested and differentially treated after requesting an accommodation. Specifically, he was denied the ability to work 100% remote, and after requesting an accommodation, a coworker used the term "crazy" during a meeting, which resulted in S.K. and a former coworker looking directly at the appellant.

6. The appellant was subjected to a hostile work environment based on his sexual orientation in that S.K. used a hand gesture during a meeting that the appellant perceived as referring to his sexual orientation, which the appellant found inappropriate and offensive.

7. The appellant was retaliated against for having reported his concerns to the Office of Equal Employment Opportunity (EEO). Specifically, the appellant received a poor performance review and was subjected to an investigation into his behavior and an investigation questioning his absence from work.

The investigation by the EEO included interviews and analysis of relevant documentation. The investigation revealed the following with respect to the various types of discrimination alleged.

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[3] This was actually an unclassified Research Analyst 3 position.

Color-based Discrimination

The appellant offered no information in support of this allegation.

Sexual Orientation-based Discrimination

The appellant provided no factual evidence in support of this allegation. The allegation was based on speculation. By the appellant's own admission, he had not shared his sexual orientation with anyone at DCA including the respondents.

Disability-based Discrimination

The appellant was not denied a reasonable accommodation. The ADA Coordinator engaged in an interactive process with the appellant. As a result, the appellant was given a private office instead of being allowed to work 100% remote. The decision regarding his accommodation was not made by either respondent.

Regarding the alleged use of the term "crazy," the appellant could not offer any context regarding the use of the word nor was he able to identify who used the term.

Race-based Discrimination

It was common for applicants in the Division of Disaster Recovery & Mitigation (DDRM) to be offered temporary positions prior to being brought on as full-time State employees. This practice was engaged in because the State hiring process can be lengthy timewise, and there was a need for applicants to start immediately. A non-African American applicant also started as a temporary worker just like the appellant. In addition, another non-African American female applicant was offered to start as a temporary worker, but she declined because she was a current State employee and did not want a break in medical coverage.

Regarding the allegation about the appellant's payrate when hired as a temporary worker, the appellant was initially offered the payrate comparable to the other temporary workers performing the same or similar work of $30/hr. After the appellant declined, he was offered a higher rate of $32/hr., which he accepted. After starting as a temporary worker, he expressed dissatisfaction with his payrate and requested to speak with S.V., Deputy Commissioner, who approved an increase in his payrate to $43.72/hr.

With respect to the allegations that S.K. referred to the appellant as a "dummy" and communicated that the way he talked "doesn't sound good," the appellant was unable to provide any witnesses to these alleged comments.

A review of the timecards for the period March 2024 to July 2024 for the appellant and the African American female temporary worker did not reveal any information to support the allegation of differential working hours. Temporary workers, including the appellant, were not required to work 8.5 to 9-hour shifts.

The appellant alleged that he was expected to complete tasks at an accelerated pace compared to non-African American peers. He asserted that he sometimes worked on the weekends and outside of work hours to complete tasks. S.K. acknowledged that she requested that the appellant assist coworkers with certain tasks. S.K. asserted that she did not request that he assist coworkers to differentially treat the appellant but only to get the projects completed by the deadlines. S.K. stated that on one occasion, the appellant had finished his task on a project, so she requested that he assist a coworker. S.K. also asserted that when the appellant informed her that he was working past his scheduled work hours and on the weekends to complete tasks, she immediately instructed the appellant not to engage in such practices. She advised the appellant that the work could wait until he was in the office.

Retaliation

The appellant received a poor rating in one aspect of his performance review; specifically, he received a poor rating in the area of communication. His overall rating was "Successfully Meet Expectations." The appellant admitted that S.K. provided information in support of the performance rating in the area of communication. The information provided by S.K. identified non-discriminatory business reasons for his poor performance rating in communication.

The investigation revealed a non-discriminatory business reason for the alleged investigation into the appellant's behavior in that S.V. and L.D. attempted to meet with the appellant and S.K. separately to mediate the issues between them. The investigation also revealed a non-discriminatory business reason for the alleged investigation into one of the appellant's absences. Specifically, the appellant's absence was questioned because he was not in the office on March 17, 2025, and it was not one of his telework days. Upon being contacted and questioned by S.V., the appellant asserted that he thought the date, St. Patrick's Day, was a State holiday. However, S.V. later discovered that the appellant had been emailing Human Resources that morning about his intended leave of absence, which negated his assertion that he thought the day was a State holiday.

Therefore, the Commissioner determined that the allegations could not be substantiated.

On appeal to the Civil Service Commission (Commission), the appellant, with respect to the alleged disability discrimination, states that his "concern was not with

the accommodation itself, but with the justification provided to the department's accommodation specialist for denying my request to work from home and modify the accommodation." According to the appellant, this justification related to the need for the appellant to train new staff in the office and that having one person 100% remote would undermine team building and collaboration. The appellant proffers that this justification does not align with the facts. Specifically, he notes that on October 10, 2024, a remote work session was held between monitors; on October 28, 2024, a remote training was conducted despite one participant being onsite; and collaboration "primarily" occurs remotely or via email due to varying telework schedules amongst monitoring team members, as exemplified by email correspondence that occurred on February 3 and 10, 2025. Given this, the appellant maintains, the accommodation to work remotely should have been approved. He states that he currently works independently and completes his monitoring tasks without issue and provide updates to S.V. and L.D. "both remotely and in person."

Turning to the alleged race-based discrimination and the process of transitioning from a contract to a State unclassified position, the appellant claims that L.D. gave him a misleading reply when, on April 11, 2024, she stated, "We are in the process of getting State titles approved through the Commissioner's Office. Once they are approved, we will know more," because T.W., a Caucasian female, had already been hired into the Research Analyst 3 title prior to the appellant's start date. Also, while C.I., a non-African American employee, also transitioned from a contract to State unclassified position, he had already been working as a contract employee in the Attorney General's Office and simply transferred into an unclassified Research Analyst 3 position within DCA, "a seamless transition that contrasts with the obstacles [the appellant] faced."

With respect to alleged racially discriminatory enforcement of working hours, the appellant explains that on July 1, 2024, during an all-staff meeting, S.V. announced that all contract employees would be required to work from 8:00 a.m. to 5:00 p.m. with a one-hour lunch break. Shortly after, on July 3, 2024, DCA staff sent a clarifying email stating that contract employees were only required to take a 30-minute lunch:

> After Monday's announcement we received some clarifying guidance from the office of labor relations related to mandatory breaks. As such, <u>[D]DRM will require 22nd Century staff to take a minimum half hour lunch break</u>. There aren't any DCA policies that prescribe work hours and lunch breaks. As such, [D]DRM management has discretion to determine appropriate work and break schedules. With this modification employees would have additional flexibility within the prescribed workday of 8am-5pm to work up to eight and half hours on any given day, while cumulatively working no more than forty hours.

> We appreciate your compliance and hope this added flexibility is helpful as you adapt to the new parameters.

The appellant claims that despite the above clarification, S.K. rigidly enforced the full 8:00-5:00 schedule, but only for the appellant and another African American female, Mrs. B. Following the appellant's transition to State unclassified employment on July 29, 2024, S.K. changed the scheduling rules. On August 15, 2024, she issued an email stating that contract employees could now follow standard State employee schedules:

> From: [S.K.]
> Sent: Thursday, August 15, 2024 5:08 PM
> To: [C.I.]; [Appellant]; [C.C.]
> Cc: [L.D.]
> Subject: Vacations and Work Hours
>
> Good afternoon,
>
> Can you each send me an email and copy [L.D.] with the following:
>
> - Vacation requests through the end of the year, especially around the holidays. If you do not have anything right now, that is ok. Please just send me your requests for approval as soon as you know.
> - The time you are starting work each day and ending each day. For example: 9-5 with an hour for lunch, 8-4 with an hour for lunch, 8:30-4:30 with an hour for lunch.

The appellant contends that this change allowed C.I. and C.C., both non-African American contract employees at the time, to work 8-hour shifts with a 1-hour lunch break, resulting in only seven hours of actual work per day while still being compensated for a full 40-hour workweek. In contrast, according to the appellant, he and Mrs. B were previously required to work a strict 8:00-5:00 schedule with at least a 30-minute lunch in order to receive full pay, and any deviation resulted in lost compensation. As a result, the appellant states, C.I. and C.C. were effectively paid for five hours per week that they did not work, demonstrating clear inequity and discriminatory treatment. Importantly, during the period in question, Mrs. B and the appellant were the only African American contract employees reporting to S.K., and they were the only ones held to the stricter standard.

Turning to the alleged retaliation, the appellant continues to maintain that the poor rating he received in the area of communication on his interim Performance

Assessment Review (PAR) was retaliatory and argues that in some areas, such as flexibility, he did not receive a high enough rating.[4]

Regarding the alleged retaliation in the appellant's being subjected to an investigation into his behavior and S.V.'s meeting to mediate the issues between the appellant and S.K., the appellant explains that S.K. had complained that the appellant "never allowed [S.K.] into [his] office; that [he] only cracked the door and spoke to her through the crack, and before [S.K.] left, [the appellant] pointed [his] finger in her face and said, 'email.'" The appellant complains that S.K.'s account was inaccurate and his attempt to address inconsistencies were largely disregarded; the tone of the meeting became antagonistic against him; and his behavior was mischaracterized to support a false narrative.

The appellant continues to maintain that, as retaliation, his absence on March 17, 2025 was questioned and he was docked pay for that day. The appellant insists that he was in communication with Human Resources regarding a request for a medical leave of absence. He states that, at the time, he had mistakenly believed that March 17, 2025, St. Patrick's Day, was a State holiday. He states that leadership's objection was not related to the date confusion but rather focused exclusively on whom he contacted about the leave.

In response, DCA, represented by Jana R. DiCosmo, Deputy Attorney General, maintains that it correctly concluded that no State Policy violations had occurred. DCA insists that hiring employees on a contract basis is not unusual while agencies await job title approval. Indeed, by his own admission, the appellant initially declined the position and only accepted when DCA increased the hourly rate of pay. And, by the appellant's own admission, DCA increased his hourly rate significantly on a second occasion, shortly after his date of hire, ultimately increasing his salary by approximately 46% more per hour than similarly situated employees. DCA states that it did not do this for other employees during that time, and there is no evidence that he was treated less favorably during the hiring process based upon his membership in a protected class.

With respect to the issue of accommodation, DCA notes that while an employer must engage in an interactive process, it is not required to provide an employee the exact accommodation sought if there is another accommodation that enables the employee to perform the essential functions of the job. Per DCA, the appellant was free to continue the interactive process by declining the private office and providing medical documentation that explained why fully remote work was the only effective accommodation, but there is no indication that he did so. Further, the appellant's

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[4] *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 these arguments in this decision because specific appeal procedures exist for these issues. *See N.J.A.C.* 4A:6-5.3.

satisfactory job performance indicates that he is in fact able to perform the essential functions of his job with a private office. It is only now, over a year later, that the appellant seeks to complain about the purported inadequacy of the *rationale* for the accommodation provided, "not with the accommodation itself."

DCA maintains that the enforcement of work hours based upon employee status was not discriminatory. In this regard, it maintains that the appellant's allegations on this issue were appropriately found unsubstantiated.

Turning to the allegations of retaliation, DCA insists that the provision of substantive feedback in a PAR was not retaliatory. Specifically, the communication rating did not result in an unfavorable interim PAR, and his receipt of a satisfactory instead of excellent rating in the category of flexibility does not constitute an adverse employment action. The appellant also checked off that he agreed with the contents of the PAR at the time of the review.

DCA further maintains that the deduction of pay for an unauthorized absence was not in retaliation for the appellant's filing a discrimination complaint against his supervisors as "sequence is not consequence." Further, the appellant's assertion fails to acknowledge that the decision not to pay him was made by the Employee Relations Administrator. None of the appellant's supervisors were responsible for the decision not to pay him. Importantly, according to DCA, the appellant failed to notify anyone at his workplace that he would be absent. While the appellant complains that communications about a leave of absence should have been facilitated through Human Resources, no one at DDRM had any reason to expect that he would be absent the morning of March 17, 2025. Then, when he was contacted by a supervisor at the instruction of one Human Resources employee, the appellant lied about believing the day was a State holiday even though he was in communication with another Human Resources employee that morning seeking a medical leave of absence. The appellant was not required to reveal the details of the reason he sought the leave of absence when he spoke with his supervisor. Rather, he just needed to inform his supervisor that he would not be in the office that day. Both operational need and common sense require that employers have notice of when employees will not be present for work. Ultimately, the appellant was not denied a medical leave of absence. And it was Human Resources, not his supervisors, that determined his failure to notify anyone at the workplace prior to gaining approval for a leave of absence made his absence on March 17, 2025 unauthorized and, as such, not compensable.

In reply, the appellant maintains that he can establish a *prima facie* case of employment discrimination under *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973): he is a member of a protected class; he was qualified and performed satisfactorily; he suffered adverse employment action (lower compensation, fewer benefits, differing classification); and a similarly situated individual outside the protected class was treated more favorably. The appellant, citing *R.* 4:6-2(e), insists

that at this stage, his allegations must be accepted as true, and "any effort to prematurely shift the burden . . . prior to the completion of discovery . . . is procedurally improper."

In reply, DCA maintains that the New Jersey Court Rules regarding discovery practice do not apply to the forum here in which the appellant filed his complaint. As an adjudicative agency that must evaluate the merits of a complaint, including their factual credibility and legal validity, the Commission is not and should not be required to accept a complainant's allegations as true. It is the appellant's burden to prove his allegations. And, even if the Commission accepted the appellant's allegations as true, there is no merit to the complaint for the reasons already expressed.

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 (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. *See N.J.A.C.* 4A:7-3.1(a). 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 this policy. No employee bringing a complaint, providing information for an investigation, or testifying in any proceeding under this policy shall be subjected to adverse employment consequences based upon such involvement or be the subject of other retaliation. *See N.J.A.C.* 4A:7-3.1(h). The State Policy is a zero tolerance policy. *See N.J.A.C.* 4A:7-3.1(a). Moreover, 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 an adequate investigation was conducted and that the investigation failed to establish that the appellant was discriminated or retaliated against in violation of the State Policy. DCA appropriately analyzed the available documents and witness interviews in investigating the appellant's complaint and concluded that there were no violations of the State Policy. The Commission adds the below discussion in response to the instant appeal.

Regarding the alleged disability discrimination and the issue of accommodation, the appellant proffers that his concern was with the "justification"

provided to the accommodation specialist for denying his request for 100% telework and to modify the accommodation to a private office. According to the appellant, this justification related to the need for the appellant to train new staff in the office and that having one person 100% remote would undermine team building and collaboration. The appellant contends that this justification does not align with the facts because he is able to point to examples of work meetings occurring remotely and collaborations occurring over email. However, the appellant has not established how his ability to identify a few examples of meetings occurring remotely and collaboration occurring over email demonstrates that DCA discriminated against his disability when it determined that it could not provide the accommodation of 100% telework but could provide him a private office. The appellant states that collaboration "primarily" occurs remotely or via email, not that collaboration exclusively occurs via those means. He also states that he provides updates to S.V. and L.D. "both remotely and in person." Further, by the appellant's own indication, his concern was "not with the accommodation itself." As DCA notes, the appellant could have chosen to continue the interactive process by declining the private office. In fact, the record reflects that the provision of the private office enabled the appellant to satisfactorily perform the essential functions of his job. Moreover, the investigation had found that neither respondent had made the accommodation decision. Therefore, there is no basis in the record to disturb DCA's conclusion that the allegation of disability discrimination could not be substantiated.

On the alleged race-based discrimination and the process of transitioning from a contract to a State unclassified position, the appellant claims that L.D.'s April 11, 2024 statement, "We are in the process of getting State titles approved through the Commissioner's Office. Once they are approved, we will know more," was suspect because T.W., a Caucasian female, had already been hired into the Research Analyst 3 title prior to the appellant's start date. The appellant has provided no evidence of T.W.'s employment history with DCA.[5] The appellant also points to C.I., a non-African American employee, who also transitioned from a contract to State unclassified position. The appellant avers that C.I. had already been working as a contract employee in the Attorney General's Office and simply transferred into an unclassified Research Analyst 3 position with DCA, "a seamless transition that contrasts with the obstacles [he] faced." Once again, the appellant does not provide any evidence of C.I.'s employment history. In any event, the appellant is not disputing that C.I. transitioned from a contract to State unclassified position. To the extent C.I. may have experienced a smoother or more "seamless" transition as compared to the appellant's, the appellant has not produced any evidence to suggest this was due to improper racial considerations, as opposed to C.I.'s apparent status as a preexisting State contractor. Therefore, there is no basis in the record to disturb DCA's conclusion that the allegation of race discrimination in the hiring process could not be substantiated.

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[5] Agency records indicate that a T.W. received a State unclassified appointment to the title of Research Analyst 3 with DCA, effective July 15, 2024, months after April 11, 2024.

Concerning the alleged race-based discrimination and working hours, the appellant claims that when the guidance on work schedules was clarified on July 3, 2024, S.K. continued to rigidly enforce the prior schedule of working 8:00 am. to 5:00 p.m. with a one-hour lunch break only for the appellant and another African American female. However, the July 3, 2024 guidance had indicated that contract staff would only be required to take a "minimum" lunch break of 30 minutes; management would have discretion to determine appropriate work and break schedules; and the prescribed workday continued to be 8:00 am. to 5:00 p.m. Otherwise, there is no evidence in the record that S.K. was setting work and break schedules along racial lines. The appellant also claims that when guidance changed again on August 15, 2024 to allow a schedule of seven hours of work and a one hour lunch break (*e.g.*, 9:00 a.m. to 5:00 p.m. with a one hour lunch), C.I. and C.C., non-African American contract employees, could at that point only perform seven hours of actual work per day while being compensated for a 40-hour workweek. However, this is not supported in the record. The July 3, 2024 guidance had indicated that contract employees could work "no more than" 40 hours, and the August 15, 2024 email says nothing about how much C.I. and C.C. would be compensated. Therefore, there is no basis in the record to disturb DCA's conclusion that the allegation of race discrimination in the setting of work hours could not be substantiated.

Turning to the alleged retaliation, the appellant contends that the investigation into his behavior and S.V.'s meeting to mediate between the appellant and S.K. was retaliatory. However, this is unsupported in the record. There is no evidence that anything other than the communication issues between the appellant and S.K. prompted the investigation and meeting. Similarly, there is no evidence in the record that anything other than a legitimate business concern led to the questioning of the appellant's absence on March 17, 2025 and the decision to deem the absence unauthorized and not compensable. While the appellant asserted at the time that he believed the day was a State holiday, he was also emailing Human Resources staff that day regarding his request for a medical leave of absence. Further, although the appellant emphasizes that he was in communication with Human Resources regarding his request for a medical leave of absence, there is no indication in the record that he had been preapproved for such medical leave of absence for March 17, 2025. Thus, DCA's position that no one at DDRM had any reason to expect that he would be absent the morning of March 17, 2025 is supported in the record. Additionally, the record reflects that it was Human Resources, not the respondents, who deemed the absence unauthorized and not compensable.

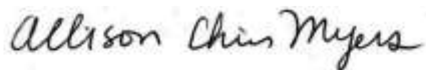
Accordingly, the investigation was thorough and impartial, and no substantive basis to disturb the determination has been presented.

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 17TH DAY OF DECEMBER, 2025



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