



STATE OF NEW JERSEY

CIVIL SERVICE COMMISSION

In the Matter of J.L.  
Kean University

CSC Docket No. 2016-2750

Court Remand

ISSUED: OCT 21 2016 (DASV)

The Superior Court of New Jersey, Appellate Division, vacated the Civil Service Commission's (Commission) decision to deny J.L.'s appeal of the determination of the President of Kean University, stating that there was sufficient evidence to substantiate a finding that he violated the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy). The Court remanded the matter for a hearing at the Office of Administrative Law (OAL). See *In the Matter of J.L., Kean University*, Docket No. A-2501-13T4 (App. Div. February 10, 2016). The court did not retain jurisdiction. Copies of the Appellate Division's decision and the Commission's decision, *In the Matter of J.L.* (CSC, decided December 18, 2013), are attached hereto and incorporated herein.

The facts of this matter are thoroughly discussed in the attached decisions. Two co-workers complained that J.L., a former Grounds Worker with Kean University, made derogatory remarks about their national origin.<sup>1</sup> After an investigation by an independent consultant, finding that it was "more likely than not" that J.L. made the comments, the appointing authority issued a determination that J.L. violated the State Policy. Consequently, J.L. was required to undergo remedial training. On appeal to the Commission, J.L. asserted that the allegations were "completely baseless and unfounded." The appointing authority responded with a summary of the investigation, which included the specific comments J.L. was

<sup>1</sup> The appellant was laid off from his position with Kean University effective April 30, 2015. He currently serves as a Safety Service Patrol Apprentice, having been appointed by the Department of Transportation on August 8, 2015. The appellant's co-workers, N.L. and E.G., were also laid off from their Grounds Worker positions effective April 30, 2015. They are not serving in State government.

alleged to have made. However, it did not provide a copy of the investigation. Upon review, the Commission rejected the appellant's claim that he never made any comments or engaged in improper conduct based on the appointing authority's indication that sufficient evidence was found in the investigation to substantiate a State Policy violation. Thus, the Commission denied J.L.'s appeal on the written record, noting that a hearing was unnecessary because no material dispute of fact had been presented.

Thereafter, J.L. appealed to the Appellate Division, arguing that his appeal should be remanded for a hearing to establish facts in the matter. The Appellate Division agreed and noted deficiencies in the investigation. For instance, it indicated that the record did not establish whether J.L. was advised of the comments he allegedly made and it was unclear whether witnesses were interviewed under oath. The Appellate Division emphasized that the Commission only received a letter from the appointing authority summarizing the investigation report. It determined that disputed material facts existed in the case in that "Kean contends J.L. made inappropriate comments to co-workers and acted unprofessionally, but J.L. denied making the comments or engaging in the alleged action." The Appellate Division also indicated that the dispute largely turned on the credibility of J.L. and the witnesses, which could only be assessed by a fact-finder making first hand observations. Therefore, the Appellate Division reversed the decision of the Commission and remanded the matter to the Commission for a hearing.

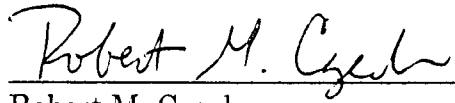
### CONCLUSION

Discrimination appeals are treated as reviews of the written record. See *N.J.S.A.* 11A:2-6(b). Hearings are granted in those limited instances where the Commission determines that a material and controlling dispute of fact exists which can only be resolved through a hearing. See *N.J.A.C.* 4A:2-1.1(d). In the prior matter, the Commission denied the appellant's appeal upon a review of the written record, finding that a sufficient basis existed in the record to uphold the determination that the appellant violated the State Policy. However, the Appellate Division has found that disputed issues of material fact exist which cannot be determined on the written record, thereby requiring a hearing in the matter where an Administrative Law Judge may evaluate evidence and assess the credibility of the witnesses. Therefore, in accordance with the Appellate Division decision, the Commission grants a hearing at the OAL.

### ORDER

Therefore, it is ordered that this matter be referred to the OAL for a hearing as a contested case.

DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION ON  
THE 19<sup>TH</sup> DAY OF OCTOBER, 2016



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