

STATE OF NEW JERSEY

In the Matter of Tonnesha Kidd, Department of Health

CSC Docket No. 2017-2568

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CORRECTED DECISION

Administrative Appeal

ISSUED: MARCH 29, 2018 (JET)

Tonnesha Kidd, a former Direct Care (CWA) employee with Trenton Psychiatric Hospital, Department of Health, petitions the Civil Service Commission (Commission) for review of her separation from employment.

As background, this agency's records reflect that Kidd was employed as a Direct Care (CWA) employee from January 14, 2016 through January 19, 2017, the date she was separated from employment.

In her petition, Kidd contends, among other things, that she was subjected to discrimination, retaliation, and a hostile work environment on a continuous basis at work on the basis of her race/ethnicity. She adds that she reported her concerns to the Administrator's Office but her concerns were not addressed, and the Assistant Director of Nursing advised her that she was terminated from employment. Kidd maintains that that she should have been entitled to a hearing prior to being terminated without notice. Moreover, Kidd contends that her complaints were required be investigated pursuant to *N.J.S.A.* 10:5-12 (Law Against Discrimination [LAD]) and the Conscientious Employee Protection Act (CEPA).

In support, Ms. Kidd submits a copy of a Grievance Procedure Form that indicates it was received by the appointing authority's Employee Relations Office on February 2, 2017.

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¹ At the time of the filing of the appeal, Trenton Psychiatric Hospital was part of the Department of Human Services.

Despite being provided with the opportunity, the appointing authority did not provide a response.

CONCLUSION

Initially, *N.J.A.C.* 4A:1-1.2(b) provides that Civil Service rules shall apply only to career service employees unless otherwise specified. In this matter, the record reflects that Kidd was not a career service employee. Rather, the record shows that she was employed as a Direct Care (CWA) employee. Direct Care (CWA) employees are not career service employees. In this regard, Direct Care (CWA) positions are categorized by this agency as Temporary Employment Services (TES) positions, which are not career service titles. Therefore, since Kidd was not employed in a career service Civil Service title, the Commission does not now have jurisdiction to review her petition. Regarding Kidd's argument that she was terminated without a hearing, since she was a temporary non-Civil Service employee, she was not entitled to a hearing prior to her termination under Civil Service law and rules. In other words, Kidd was serving at the pleasure of the appointing authority and it was free to terminate her employment at its discretion.

With respect to her discrimination claims, the Commission cannot address such issues within the context of this appeal. The Commission does not have jurisdiction to address her discrimination claims pertaining to CEPA and the LAD. The Commission can only review matters implicating its law and rules. It is not the proper forum to review claims under CEPA or the LAD. However, *N.J.A.C.* 4A:7-3.1, the State Policy Prohibiting Discrimination in the Workplace (State Policy), applies to all employees. Thus, as several of Kidd's claims implicate the State Policy, the appointing authority is directed to initiate an investigation pursuant to *N.J.A.C.* 4A:7-3.2. In this regard, a copy of this decision will be provided to the appointing authority's Equal Employment Opportunity Division.

ORDER

Therefore, it is ordered that this petition 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 27th DAY OF MARCH, 2018

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Deirdre L. Webster Cobb Acting Chair Civil Service Commission

Inquiries and Correspondence

c: Tonnesha Kidd Frank Maimone Robin Murr Mamta Patel Christopher Myers
Director
Division of Appeals
and Regulatory Affairs
Civil Service Commission
Written Record Appeals Unit
P.O. Box 312
Trenton, New Jersey 08625-0312