

B-22



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of J.B., Department of
Environmental Protection

CSC Docket No. 2015-1258

Discrimination Appeal

ISSUED: **AUG 03 2015** (LDH)

J.B., an Assistant Regional Forester with the Department of Environmental Protection (DEP) appeals the attached decision of the Chief of Staff, 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 male, filed a complaint with Office of Equal Opportunity and Public Contract Assistance (OEO) alleging that L.F, a female in the Senior Executive Service, and D.S., a male Regional Forester,¹ had discriminated against him based on his gender and disability. Specifically, he alleged that L.F. treated men more harshly in regard to discipline and gave women better assignments. Also, he claimed that C.S., a female Forester, assumed his duties in the No Net Loss (NNL) program, despite only being hired less than one year earlier. In addition, he alleges that he was not given the opportunity to become the Regional Forester in the NNL program because of his gender and disability. In response to his complaint, the OEO conducted an investigation which included 10 interviews and a review of relevant documents. The OEO could not substantiate any of the allegations that the appellant made against any of the respondents.

¹ D.S. received a regular appointment to the title of Regional Forester, effective December 27, 2014. Prior to that appointment, he was serving provisionally, pending open competitive examination procedures, in the title of Chief Bureau of Forest Management.

On appeal to the Civil Service Commission (Commission), the appellant disagrees with the OEO's conclusion. He points to a meeting with D.S, and L.F. where in response to the appellant's statement that he had a disability, D.S. responded that "You don't have a disability." According to the appellant, B.L., a male Information Technology Specialist, who was in the room during the meeting, could corroborate this statement. The appellant maintains that B.L. and E.L. an outside consultant, would substantiate his case that he was subjected to violations of the State Policy. Moreover, the appellant states that he was not given the opportunity to become Regional Forester of the NNL program but instead was moved to become the Regional Forester for the Wood Utilization and Marketing (UM) program because of his gender and disability. He asserts that the UM program has no other staff and no room for advancement. In addition, he alleges gender discrimination as C.S., who was hired in the title of Forester, was assigned higher level out-of-title duties. The appellant argues that C.S. was given higher level Regional Forester duties in order to become permanent in that title. Lastly, the appellant contends that he overheard some disparaging remarks about disabilities when he attended a training session in October 2014.

In response, the OEO reiterates that its investigation found that the appellant's allegations were meritless. It found that L.F. did not act in a manner that was discriminatory or detrimental to male employees. L.F. indicated that she assigned C.S. more administrative duties because she could provide fresh perspectives on how to improve the structure and organization of the program. Moreover, witnesses indicated that C.S. was assigned more duties because she was qualified to handle them irrespective of her gender. In this regard, the investigation revealed that C.S. was a New Jersey Certified Tree Expert and an ISA Certified Arborist, who had done transformative urban forestry work in the past. In contrast, the witnesses stated that the appellant did not have the interpersonal and management skills for the additional duties. OEO also noted that though the appellant believed that C.S. was being "groomed" for a Regional Forester title, her current title would prevent her from qualifying for the Regional Forester title.

The OEO also found that L.F. had not discriminated against the appellant because of his disability. In this regard, the investigation revealed that though L.F. was aware of the appellant's disability, none of the other witnesses were able to support the appellant's allegation that he was discriminated against due to his disability. Specifically, the investigation revealed that the appellant was not offered the Regional Forester position for the NNL program and was instead assigned to the UM program for legitimate business reasons. Specifically, the appointing authority chose to fill the Regional Forester position in the NNL program with staff already holding the title of Regional Forester. However, at that time, the appellant was in the title of Assistant Regional Forester, which prohibited him from supervising full-time personnel and approving timesheets. Further, the UM position was determined to be advantageous for the appellant in that it would

give him the opportunity to supervise a program and assist in his pursuit to attain the Regional Forester title.² Lastly, the OEO states that during the investigation, the appellant never requested that E.L. be interviewed. Ultimately, the investigation found no evidence of discriminatory practices by any of the respondents.

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)*. Moreover, the appellant shall have the burden of proof in all discrimination appeals. *See N.J.A.C. 4A:7-3.2(m)3*.

The Commission has conducted a review of the record in this matter and finds that an adequate and complete investigation was conducted, that the relevant parties in this matter were interviewed and that the appellant has not presented sufficient evidence to support a finding that he had been subjected to a violation of the State Policy. The OED correctly concluded that there was no violation of the State Policy with regard to gender discrimination. Although the appellant points to L.F. assigning higher level duties to C.S. as evidence of gender discrimination, the investigation determined that L.F.'s decision was based on legitimate business reasons, namely, that C.S. possessed relevant experience, and that C.S. was a New Jersey Certified Tree Expert and an ISA Certified Arborist, who had done transformative urban forestry work in the past.

Similarly, the OED correctly concluded that there was no violation of the State Policy with regard to the appellant's disability. The appellant has not shown that the comment by D.S, "You don't have a disability," conveyed discriminatory animus. In addition, the investigation found no evidence to support the appellant's contention that his move into the UM program and his denial of the Regional Forester position in the NNL program was due to his disability. Rather, the appointing authority presented legitimate business reasons for its actions. Specifically, the NNL program required supervision of personnel and at that time, the appellant was an Assistant Regional Forester who was restricted from supervising full-time personnel and approving timesheets. Subsequently, the

² The title of Regional Forester requires three years of professional and/or technical experience in silvicultural, forest management, and/or reforestation work; one (1) year of which shall have involved responsibility for program planning, implementation and/or supervision.

appointing authority moved staff who already held the title of Regional Forester to assume the NNL program. The investigation interviewed B.L. and others at the request of the appellant but none of the witnesses could corroborate any of the appellant's allegations. It is noted that the appellant never requested that E.L be interviewed and has not stated on appeal anything substantive that she would offer.

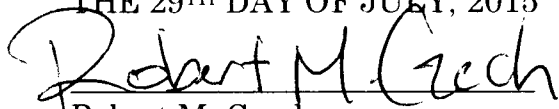
Finally, the appellant's allegation that he overheard some disparaging remarks about his disability at a training session in October 2014 were not brought up in the initial investigation, and therefore, will not be addressed on appeal. Instead, the appellant may file a new discrimination complaint against the appointing authority if he believes that the State Policy was violated at the training session. Accordingly, the investigation was thorough and impartial, and no basis exists to disturb the OEO'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 29TH DAY OF JULY, 2015



Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Henry Maurer
Director
Division of Appeals and Regulatory Affairs
Civil Service Commission
Written Record Appeals Unit
P.O. Box 312
Trenton, New Jersey 08625-0312

Attachment

c: J.B.
Melanie Armstrong
Mamta Patel
Joseph Gambino



State of New Jersey
DEPARTMENT OF ENVIRONMENTAL PROTECTION

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

BOB MARTIN
Commissioner

CONFIDENTIAL

October 21, 2014

Via Certified and Regular Mail

J. B. [REDACTED]
[REDACTED]
[REDACTED], [REDACTED]

Re: Discrimination Complaint

Dear Mr. B [REDACTED]:

The Office of Equal Opportunity and Public Contract Assistance investigated your allegations that L [REDACTED] F [REDACTED], Director of State Forester, Division of Parks and Forestry, Bureau of Forest Management, discriminated against you on the basis of gender and disability in violation of the New Jersey State Policy Prohibiting Discrimination in the Workplace, (NJDEP Policy and Procedure 2.48). The investigation was unable to substantiate your allegations. Thus, no further action will be taken in regards to this matter.

In your complaint, you alleged Ms. F [REDACTED] treats women more favorably than men. Specifically, men are treated more harshly in regards to discipline and women are given better assignments. You used C [REDACTED] S [REDACTED], Forester, as an example. Ms. S [REDACTED] was given the opportunity to work on the Bulls Island Project while you were not, despite being the more senior person. Additionally, you believe Ms. F [REDACTED] is preparing Ms. S [REDACTED] to become the Regional Forester in the No Net Loss (NNL) Program.

You further alleged disability discrimination. In particular, you believe you were passed over for the Regional Forester position after your supervisor took a lateral transfer and before it was given to D [REDACTED] J [REDACTED] because you have bipolar disorder. You also contend you are targeted by Ms. F [REDACTED] because of past problems you have had with other employees. Instead of acknowledging your good work, Ms. F [REDACTED] continues to focus on the

negative. Lastly, you feel you were forced to undertake the Wood Utilization and Marketing Program even though all your experience is in the NNL Program.

The New Jersey State Policy Prohibiting Discrimination in the Workplace (DEP Policy 2.48) prohibits the engagement of an employment practice or procedure that treats an individual less favorably based upon any of the protected categories, including gender and disability. After interviewing several witnesses and reviewing relevant documentation, the investigation was unable to support your allegations. In regards to gender discrimination, witnesses interviewed stated that Ms. F [REDACTED] is aware of and sensitive to gender issues in the forestry field. The investigation did not find that the encouragement provided to Ms. S [REDACTED] was discriminatory or detrimental to male employees.

Further, the investigation determined that Ms. S [REDACTED], the female employee you use as a comparable, was treated consistent with her skill set and experience. Ms. S [REDACTED] was described by witnesses as very smart and capable. Witnesses believed Ms. S [REDACTED] was assigned the Bulls Island Project because she was qualified to handle it irrespective of her gender.

While the investigation found that Ms. F [REDACTED] was aware of your disability, witnesses were unable to support your allegation that she engaged in disability discrimination. The investigation did not find that you sought any specific, workplace accommodations.

While the Office of Equal Opportunity concluded that the New Jersey State Policy Prohibiting Discrimination in the Workplace was not violated, the Office wishes to remain proactive and encourage a productive working environment. As such, the Division of Forestry will receive training to improve interpersonal and communication skills.

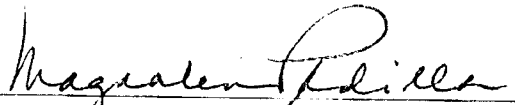
If you disagree with this determination, pursuant to N.J.A.C. 4A:7-3.2, you have the right to appeal my decision. You must submit a written appeal to the New Jersey Civil Service Commission, Division of Merit System Practices and Labor Relations, Written Record Appeals Unit, P. O. Box 312, Trenton, NJ 08625-0312, postmarked or delivered within 20 days of your receipt of this determination. Your appeal must include a copy of this determination, the reason for the appeal and the specific relief requested. Be advised that effective July 1, 2010, there is a \$20 fee for appeals. Please include a check or money order along with your appeal, payable to NJCSC. Persons receiving public assistance and those qualifying for NJCSC Veterans Preference are exempt from this fee.

Please be advised that the State Anti-Discrimination Policy prohibits retaliation against any employee who alleges that she or he was the victim of discrimination or harassment, provides information in the course of an

investigation into claims of discrimination or harassment in the workplace or opposes a discriminatory practice. Please immediately contact the Office of Equal Opportunity and Public Contract Assistance at (609) 984-9742, if you feel that you have been the victim of retaliation or if you have any future complaints of discrimination or harassment.

Lastly, we remind you that all aspects of EEO complaints are considered highly sensitive and must be kept confidential. You should not discuss this matter with anyone else. Persons who violate the confidentiality provision of the State Anti-Discrimination Policy may be subject to discipline.

Sincerely,



Magdalena Padilla, Esq.,
Chief of Staff

c. Melanie L. Armstrong, Esq., Director
Mamta Patel, Director, NJ EEO/AA, Civil Service Commission

