

B-24

STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of E.B., Stockton
University

CSC Docket No. 2017-886

Discrimination Appeal

ISSUED: **FEB 24 2017** (SLK)

E.B., an Assistant Professor with Stockton University, appeals the decision of the President, which found that the appellant did not 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).

By way of background, the appellant, an African-American male, filed a complaint with the Office of Institutional Diversity and Equity (IDE) alleging that the determination not to grant him tenure was based on his race and in retaliation for filing a prior discrimination complaint. Specifically, he alleged that his denial of tenure was based on an unsubstantiated allegation of sexual harassment that was in his employment record, retaliation for his prior request for an investigation pertaining to discriminatory practices by his peers in the organic chemistry workgroup, and an unfair assessment of his faculty file. The IDE investigated the appellant's complaint, which consisted of interviewing witnesses, including the seven employees of the Chemistry Program Review Committee (PRC) that recommended that the appellant be denied tenure, but was unable to substantiate a violation of the State Policy.

On appeal, the appellant claims that the PRC relied heavily on the anonymous evaluation of a single student, which, among other complaints, contained an allegation that he used inappropriate analogies that were sexual in nature. In this regard, he argues that university policy requires that the allegation made against him be submitted to the IDE for investigation. However, none of the members of the PRC reported the anonymous comment. Rather, the appellant indicates that on March 2, 2016, he asked the IDE to conduct a formal investigation into the allegation, but was advised that it would not be conducting an

investigation. The appellant maintains that this unsubstantiated allegation was used against him by the PRC in denying his tenure. Further, he claims that the anonymous student indicated in his evaluation that he advised M.R., an Associate Professor, of this allegation, but M.R. did not report the allegation. The appellant argues that by citing the anonymous allegation in its recommendation, the PRC substantiated the claim without an IDE investigation. Moreover, instead of conducting a formal investigation, the IDE contacted the Interim Provost, who did not have the power to address discrimination claims, in an attempt to mediate this matter.

Additionally, the appellant asserts that the PRC retaliated against him for requesting an earlier investigation regarding discriminatory practices against him after he complained that he was the only organic chemistry faculty who submitted tests and quizzes to be evaluated by other faculty. Moreover, he argues that the PRC discriminated against him based on his race since he met the majority of the faculty plan that is used to evaluate professors for tenure. However, the appellant states that there was very little discussion of his accomplishments or failures in the PRC's recommendation and that his accomplishments were not fairly judged compared to other who received tenure.

In reply, the appointing authority represents that it thoroughly investigated the appellant's claim and concluded that the PRC did not violate the State Policy. It highlights that the appellant chose not to file a complaint alleging discrimination even though other faculty did not submit tests and quizzes for his evaluation. Further, its investigation found that the organic chemistry work group may, but is not required to, share their tests, quizzes and course material with other faculty members for the purposes of assessment and student learning. Moreover, the investigation of the PRC's recommendation revealed that the anonymous student's evaluation comments did not, by itself, result in denial of the appellant's tenure. Instead, the record indicated that the appellant did not meet the university's standards and he did not take into account prior review recommendations in his poorly constructed fourth year tenure evaluation file. Further, the appointing authority highlights that the appellant waited approximately one year to report the allegation regarding the anonymous student's course evaluation comment to the IDE, which was after he was denied tenure. As such, the IDE asserts that his delay caused the allegations to become stale and could not be investigated at that point. However, the IDE did contact the Interim Provost, not to mediate the discrimination claim, but to gain an understanding of program reviews and academic standards. It explains that this was done in order to prevent a situation where a faculty member is placed on notice of a potential State Policy violation claim as a result of reviewing anonymous student course evaluations, but fails to notify the IDE in a timely fashion.

In response, the appellant reiterates that the anonymous student's comments states that he told M.R. about his allegations. However, the appointing authority's response indicates that M.R. did not know or speak with the anonymous student. Therefore, if M.R. did not speak with the student, the PRC knowingly used a false statement as a foundation for its denial tenure as this statement comprised approximately 20 to 25 percent of the teaching section of its recommendation. He emphasizes that the administration, as the custodian of the file, had the primary responsibility to report the allegation. Further, the appellant asserts that since he did not have any information about the anonymous student, he was not in position to request a formal investigation until he was notified about the decision regarding his tenure. Moreover, if M.R. had spoken to the student and failed to request an investigation, he failed in his duty. With regard to his retaliation claim, the appellant presents that he went to the IDE to complain about the chemistry faculty's discriminatory practices. However, he decided to not proceed with the complaint, but left the complaint open so that there would not be any retaliation. He presents 14 favorable metrics of his teaching based on his involvement with an estimated 1200 students. However, the PRC only mentioned 6 negative comments in his Evaluation Letter. Consequently, he concludes that the PRC discriminated against him.

CONCLUSION

N.J.A.C. 4A:7-3.1 states, in pertinent part, that employment discrimination or harassment based upon a protected category, such as race, is prohibited and will not be tolerated.

N.J.A.C. 4A:7-3.1(h) states, in pertinent part, that retaliation against any employee who alleges that he or she 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 the State 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 subjected to other retaliation.

N.J.A.C. 4A:7-3.2(i) provides that at the EEO/AA Officer's discretion, a prompt, thorough, and impartial investigation into the alleged harassment or discrimination will take place.

N.J.A.C. 4A:7.3-2(m)4 states, in pertinent part, that the appellant shall have the burden of proof in all discrimination appeals.

The Civil Service Commission (Commission) has conducted a review of the record in this matter and finds that the appellant has not established that he was

subjected to a violation of the State Policy. The appellant's premise is that he was not granted tenure based on the inclusion of one anonymous comment by a student who indicated that the appellant used inappropriate analogies of a sexual nature when explaining course material. However, the PRC issued a detailed 10-page single spaced Evaluation Letter explaining why it did not recommend the appellant for promotion and tenure. The letter indicates that the reviewers found his faculty file poorly organized, poorly written, and lacking in evidence, self-reflection and responsiveness to prior reviews. Further, there were doubts about his teaching effectiveness, concern about his command of the subject matter, significant gaps between his faculty plan and completed work, and questions regarding the sufficiency of his scholarly work. In other words, the PRC and the administration clearly based its determination not to grant tenure to the appellant on non-discriminatory reasons. Moreover, while the appellant argues that his denial for tenure was based on his race, he has not provided any evidence to substantiate his claim. Mere speculation, without evidence, is not enough to substantiate a State Policy violation. *See In the Matter of B.W.* (CSC, decided December 7, 2016). Additionally, while the appellant contends that the anonymous student evaluation comments were not investigated, and therefore, unsubstantiated, as noted, these comments were not the focus of the PRC's determination.

The appellant also complains that he was discriminated against on the basis of race because he was asked to submit quizzes and tests to other faculty in the organic chemistry workgroup but the other members did not share their materials with him. Initially, the appellant concedes that he initially decided not to pursue the complaint. However, the IDE investigated this allegation as part of the appellant's complaint regarding the PRC and tenure determination. The investigation revealed that the organic chemistry work group had a common practice of sharing information to help faculty within the group and that no faculty, including the appellant, was forced to turn in any quizzes or tests. As such, there was no evidence that this group engaged in discriminatory practices against the appellant. Additionally, the appellant has not presented any evidence that the reason he was not granted tenure was in retaliation for his discrimination allegation regarding the organic chemistry work group practices.

The appellant further alleges that the IDE violated the State Policy by failing to conduct a formal investigation when he brought the anonymous student's comments to the IDE one year after the comments were made. Additionally, the appellant asserts that the IDE violated the State Policy by attempting to mediate the matter by contacting the Interim Provost instead of investigating the matter and issuing a formal determination. However, the IDE first became aware of these comments over a year after they allegedly occurred and there was no evidence that M.R. actually had been advised of these comments. Moreover, since the anonymous student comments were over a year old, and anonymous, it was not unreasonable for it to determine that the information was stale and did not warrant further

investigation. See *N.J.A.C.* 4A:7-3.2(i). Additionally, the Interim Provost was not contacted to mediate the matter, but to gain an understanding of program reviews and academic standards to help prevent a situation where a professor learns that comments from a student evaluation may implicate the State Policy. In this regard, the IDE has a responsibility to train personnel and prevent violations and it was within the IDE's discretion to discuss this matter to prevent a similar situation from occurring in the future.

One other matter warrants comment. *N.J.A.C.* 4A:7-3.1(e) and *N.J.A.C.* 4A:7-3.2(d) provide that supervisory employees shall immediately report all alleged violations of the State Policy to the agency's Equal Employment Opportunity/Affirmative Action Officer or other designated individual. In this matter, it is unclear as to whether M.R. or which specific employees who signed the PRC's determination actually saw the anonymous student's comments. Instead, the PRC's determination indicates, "[h]owever, the analogies are described as sexual in nature, making them wholly inappropriate." As such, the letter which these employees signed does not provide enough context to indicate that they failed to report an allegation by an unnamed student that the appellant, by the use of such analogies, violated the State Policy. However, if it has not already done so, the appointing authority should remind all supervisors that they do have an obligation to report allegations that may violate the State Policy.

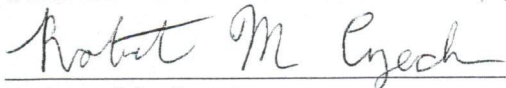
Accordingly, the Commission finds that the IDE's review was thorough and impartial. Therefore, the Commission finds that appellant failed to support his burden of proof and no basis exists to find a violation of the New Jersey State Policy Prohibiting Discrimination in the Workplace.

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 22nd DAY OF FEBRUARY, 2017



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