

STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of D.L., Department of
Human Services

CSC Docket No. 2017-3380

Discrimination Appeal

ISSUED: **AUG 18 2017** (SLK)

D.L., a Principal Clerk Typist with the Department of Human Services, appeals the decision of the Assistant Commissioner, Office of Legal Affairs, Department of Human Services, which did not substantiate her allegation to support a finding that she had been subject to a violation of the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy).

By way of background, D.L., an African-American, alleged that the Division of Medical Assistance and Health Services (DMAHS) discriminated against her because of her race. Specifically, she alleged that she was removed from her provisional appointment as a Management Assistant due to her race and DMAHS does not promote African-American employees regardless of their education and experience due to their race. The investigation consisted of interviewing D.L. and a review of eight relevant documents. The investigation revealed that D.L. acknowledged that she did not rank within the top three for the promotional examination for Management Assistant and one of the two employees who was appointed to that title is African-American. The investigation further revealed that African-American promotions at DMAHS had been relatively proportional with the African-American population within the Department.

On appeal, D.L. states that her complaint involves the fact that she was returned to her permanent title as a Principal Clerk Typist after serving provisionally as a Secretarial Assistant 2 for four years and not her prior non-appointment as a Management Assistant after serving provisionally in that title as the determination letter states. She indicates that her union advised her that an

employee should only serve provisionally in a title for 90 days and therefore she implies that it is unfair that she was returned to her permanent title after serving provisionally for four years as a Secretarial Assistant 2. D.L. presents that her return to her permanent title has jeopardized her living situation, as she had to borrow from her pension to pay her bills. Additionally, she asserts that her opportunities to be promoted have been damaged, as she does not believe that anyone would promote her after reviewing her resume, which shows her career going backward from being a Management Assistant for ten years, a Secretarial Assistant for four years, and now a Principal Clerk Typist. D.L. questions how she could have been only ranked number four on the Management Assistant promotional examination after serving provisionally in that title for ten years. She complains that her human resources department never asked her if she was interested in the Management Assistant position and only advised her that the position had been filled by two employees after she asked human resources. D.L. contends that she is currently doing the work of a Secretarial Assistant and a Management Assistant.

In response, the Division of Equal Employment Opportunity (EEO) states that, during her interview, D.L. acknowledged that she "was certified fourth on the list" for the Management Assistant promotional examination. Further, when asked if she knew the race of the two individuals promoted instead of her, she replied, "I don't know." D.L. confirmed that both appointed individuals scored higher than her on the test and were ranked higher than her on the certification. She agreed that she should not have been appointed instead of the higher ranked individuals, but thought that management should have asked her if she was interested in the position. Personnel records revealed that one of the two appointed individuals is African-American and the other is Caucasian. During the interview, D.L. alleged that she was initially removed from serving provisionally as a Management Assistant, to serving provisionally as a Secretarial Assistant 2, and then returned to her permanent title as a Principal Clerk Typist, "(b)ecause the Black people around her go nowhere. It doesn't matter what degrees, Masters or whatever, they do not get promoted." The investigation revealed that 20 percent of DMAHS' workforce is African-American; however, 25 percent of promotions between January 1, 2016 and March 30, 2017 went to African-Americans. Therefore, her allegation that African-American employees were promoted less frequently than other employees could not be substantiated.

CONCLUSION

N.J.S.A 11A:4-13(b) provides in no case shall any provisional appointment exceed a period of 12 months.

N.J.A.C. 4A:7-3.1(a) 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:7.3-2(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 D.L.'s allegation that she was subjected to discrimination based on her race cannot be substantiated. D.L. complains that she was returned to her permanent title of Principal Clerk Typist after serving provisionally as a Secretarial Assistant 2 for four years and she believes that provisional appointments are only allowed for 90 days. She implies that this treatment is unfair to her and indicates that her return to her permanent title, which also decreased her salary, has caused her great financial hardship. Initially, it is noted that a provisional appointment can be up to one year and not 90 days as D.L. believes. See *N.J.S.A* 11A:4-13(b). Regardless, a provisional employee has no automatic right or expectation of achieving permanent appointment to the position to which he or she is occupying. See *O'Malley v. Department of Energy*, 109 *N.J.* 309 (1987). Moreover, she has not offered one scintilla of evidence that she has been subjected to discriminatory treatment based on her race as she acknowledged that the individuals who were permanently appointed as Secretarial Assistant 2 instead of her were ranked higher than her and mere speculation, without evidence, is insufficient to substantiate a violation of the State Policy. In the *Matter of H.F.* (CSC, decided April 19, 2017). Similarly, the eligibles that were appointed to Management Assistant instead of her were also ranked higher than her and one of the two appointees is African-American. D.L. additionally complains that the appointing authority did not ask her if she was interested in the Secretarial Assistant 2 position. However, as higher ranked eligibles were appointed, the appointing authority had no obligation to ask her. In regard to her assertion that DMAHS does not promote African-Americans, the investigation revealed that DMAHS promoted African-Americans at a relative proportion to their population in the Department. With respect to any complaints that D.L. has regarding her rank for the Management Assistant and Secretarial Assistant 2 examinations, these rankings were based on her performance on Civil Services examinations and DMAHS had no input into her rankings. In reference to her statement that she is performing the work of both a Secretarial Assistant and a Management Assistant, if she believes that her duties are not reflective of her permanent title, she may file a request for a classification review pursuant to *N.J.A.C.* 4A:3-3.9.

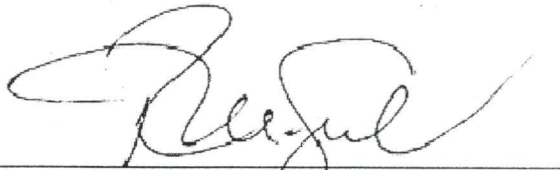
Accordingly, the Commission finds that the EEO's investigation was prompt, thorough and impartial and D.L. has not met her burden of proof.

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 16th DAY OF AUGUST, 2017



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