



STATE OF NEW JERSEY

In the Matter of B.R.,  
Department of Human Services

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

CSC Docket No. 2016-4243

Discrimination Appeal

ISSUED: SEP 06 2017 (WR)

B.R., a Program Coordinator, Mental Health, Ancora Psychiatric Hospital, Department of Human Services, appeals the determination of the Assistant Commissioner, stating that the appellant failed to present sufficient evidence to support a finding that she had been subjected to a violation of the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy).

The appellant, an African-American, filed a discrimination complaint with the Office of Equal Employment Opportunity (EEO), alleging that Z.L., Associate Hospital Administrator; B.D., Deputy CEO; M.F., Personnel Assistant; and C.F., a former Employee Relations Coordinator discriminated against her based on her race. She specifically alleged that those individuals denied her a promotion to Program Specialist 4; retaliated against her for filing a previous discrimination complaint; and treated African-American staff with harsher discipline, written write-ups and terminations than similarly situated Caucasian employees. The appellant also alleged that Z.L. retaliated against her by failing to meet with her regarding her Performance Assessment Review (PAR) and spoke to her in a disrespectful tone. In response, the EEO conducted an investigation, which interviewed nine people and reviewed 15 relevant documents. The investigation found that the appellant was denied a provisional appointment to Program Specialist 4 because she did not meet the supervisory experience requirements. Although she was later deemed eligible for the examination, the investigation found that the appointment of two eligibles who were serving in the position provisionally was not discriminatory towards the appellant. The investigation also did not substantiate the appellant's complaint that African-American staff were treated

with harsher discipline than Caucasian staff. It found that only two African-Americans supervised by Z.L. were disciplined and the charges against them were based on their conduct and not race. Regarding the allegation that Z.L. retaliated against the appellant, the investigation determined that the issues relating to her PAR were resolved through the grievance procedure, she did not assign the appellant to "Holly B" and there was no evidence that the assignment was retaliatory. Rather, the investigation revealed that the appellant volunteered to perform the duties of a Program Specialist 4 in the incumbent's absence.

On appeal to the Civil Service Commission (Commission), the appellant alleges that, in March 2014, the appointing authority for reasons of "operational effectiveness" disbanded her treatment team. She claims that she did not want to be reassigned to another unit and raised her concerns with her union. Moreover, in addition to the reassignment, the appellant argues that she was requested to also assume her supervisor's duties, who was a Program Specialist 4, in her supervisor's absence. Several months later, her supervisor retired and the appellant claims that B.D. and Z.L. asked her to continue to perform those duties, but was told that doing so would not result in a promotion. The appellant states she agreed nevertheless, because she was already doing the job and thought she would be considered for the position once it was announced. The appellant claims that, after six months had passed, she was no longer performing supervisory duties and she requested to be placed back into her former unit. She alleges that her request was refused because she is female.

The appellant claims that she applied for the provisional promotion to Program Specialist 4 in March 2015, but she was not interviewed. When she asked why, she was told it was because she lacked the required supervisory experience. The appellant contends that she does have the required supervisory experience, as well as a Masters of Family Therapy, which were both indicated on her resume. During her discussion, she asserts that she "reluctantly" provided details of her supervisory experience.

Moreover, the appellant complains that when she was later interviewed, after the Program Specialist 4 (PS3715K) eligible list promulgated, one of the interviewers named in the investigation was not present and that the interview was a formality because someone else had already been selected.<sup>1</sup> She additionally

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<sup>1</sup>The promotional examination was announced with a closing date of November 21, 2013 and was open, in relevant part, to individuals who possessed one year of supervisory experience in planning, monitoring, coordinating, implementing, modifying and/or evaluating a social or human services program. On her application, the appellant indicated that she supervised behavioral assistants who were assigned to her caseload. Agency records indicate that the appellant was found eligible for the examination and was in the third position on the only certification, PS150704, which issued on May 14, 2015 and was recorded as disposed on January 19, 2016. Agency records further indicate that the first and fourth ranked eligibles were appointed, effective July 27, 2015. It is noted that both of the appointed eligibles were previously serving in the position provisionally.



claims that the interview was unfair to her because Z.L. did not write her answers down and glanced over her resume, whereas other interviewers read her resume more carefully. After the interview, the appellant asserts that she was told that she did not provide enough details about her supervisory experience on her resume. The appellant also claims that the appointing authority was given access to the eligible list for the title of Program Specialist 4 (PS3715K) before it promulgated. Thus, the appellant argues that she was not given a fair chance for the promotion. Additionally, the appellant claims that one of the individuals who was appointed, was only appointed because he was a male. She also complains that the promotional examination announcements were not properly posted.

Furthermore, the appellant alleges that, prior to her treatment team being disbanded, she worked in Holly B, where she was harassed by a psychiatrist. However, after the appointing authority refused to interview her for the Program Specialist 4 position in March 2015, she requested to be assigned to "Birch A," but was instead assigned to "Holly B." She alleges that her reassignment to the same unit as a person who had harassed her constituted a hostile work environment and alleges that B.D. and Z.L. were aware of the hostile work environment. However, contrary to the EEO/AA's claims, she insists that she never alleged that Z.L. sent her to "Holly B", did not report this as retaliation and faults the investigation for its error. The appellant also complains that a grievance she filed regarding Z.L. and her PAR was not resolved through the grievance procedure. She additionally alleges that Z.L. disciplines African-American employees more harshly than Caucasian employees.

Regarding the investigation, the appellant claims that the EEO's findings are inaccurate and false. In particular, she complains that individuals she named were not interviewed, information she provided was omitted or overlooked and her "interview did not capture an accurate account of all of the events that occurred." As a remedy, the appellant requests an acknowledgement of her mistreatment, that the administration follows its codes of conduct, holds timely grievance procedures, conducts better investigations, and conducts future provisional appointments and promotional opportunities without bias. In support of her appeal, the appellant submits copies of the 2012, 2013 and 2014 vacancy and/or examination announcements for the promotional examination for the title of Program Specialist 4. She also submits her May 2015 appeal to the Commission of the appointing authority's determination that she was ineligible for the Program Specialist 4 provisional appointment that was announced via a vacancy announcement in 2014.<sup>2</sup>

In response, the EEO states that the investigation interviewed nine employees but did not substantiate the appellant's allegations. It asserts that it

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<sup>2</sup> In her appeal, the appellant did not allege that her non-appointment was due to a discriminatory reason. Therefore, she was notified that the Commission did not have jurisdiction to review the issue and the appeal was closed.



cannot respond to the appellant's argument that certain individuals were not interviewed because she does not identify them on appeal. Moreover, it argues that because the appellant reviewed and signed her statement and was given an opportunity to make corrections, her complaint that the interview did not capture an accurate account of the relevant events is unreasonable. The EEO contends that its investigation revealed that the appellant volunteered for a six month assignment to cover for supervisor and notes that the appellant concedes this fact on appeal.

Regarding the appellant's assertions that she was selected to perform the duties of a Program Specialist 4, but was not given a chance at the promotional opportunity for this title because she is African American, the EEO states that its investigation found that the appellant did not satisfy the required supervisory experience. The EEO states that it cannot respond to the appellant's allegations that a coworker was promoted because he is male and her request to be assigned to an old unit was denied because she is female because these are new allegations that she did not include in her complaint.<sup>3</sup>

### CONCLUSION

*N.J.A.C.* 4A:7-3.1(a) provides that under the State policy, discrimination or harassment based upon the following protected categories are prohibited and will not be tolerated: 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. Additionally, *N.J.A.C.* 4A:7-3.1(b) states that it is a violation of this policy to use derogatory or demeaning references regarding a person's race, gender, age, religion, disability, affectional or sexual orientation, ethnic background or any other protected category set forth in (a) above. A violation of this policy can occur even if there was no intent on the part of an individual to harass or demean another. Finally, 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 and finds that an adequate investigation was conducted. The investigation interviewed nine witnesses, but was not able to substantiate the appellant's claims. While the appellant reiterates her claims on appeal, she has not presented any evidence whatsoever to support her claims of discrimination. For example, regarding the appellant's contention that she was denied a promotion due to her race, she has failed to present any evidence demonstrating such. Specifically, it appears that the appellant was not interviewed for the provisional appointment to Program

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<sup>3</sup> As it appears that this allegation was not included in her initial complaint, it will not be addressed in this matter. However, the appellant may file a new complaint with the EEO if she wishes.

Specialist 4. The Commission observes that when she questioned B.D., Z.L. and S.L. about not being scheduled for an interview, she admitted that she reluctantly provided details of that experience and was told that she was not interviewed because she did not provide enough details about her supervisory experience on her resume. Agency records indicate that the appointing authority appointed the two eligibles who were serving in that title provisionally. Against these facts, the appellant has presented no evidence of racial discrimination. Furthermore, the appellant's allegation that Caucasian employees were disciplined less and treated less harshly than African-American employees is unsupported by any evidence. Regarding her reassignment and allegation that she was forced to perform additional duties, the appellant has similarly failed to support her claim of racial discrimination with any evidence. Furthermore, the appellant admits at times she performed such work voluntarily.

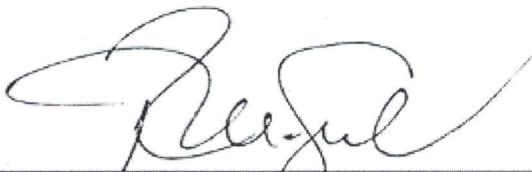
Finally, the appellant's claims concerning the appointing authority's failure to post promotional examination announcements and a hostile work environment are similarly not supported by any evidence. Under the State Policy, a complaint *must* be based upon one of the protected classes listed above. A thorough review of the record does not reveal that the appellant's complaint regarding these allegations is based upon membership of one these classes. Therefore, the appellant has failed to meet her burden of proof in this matter. *See N.J.A.C. 4A:7-3.2(m)3*. Accordingly, under these circumstances, no basis exists to find a violation of the State Policy.

### 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 6th DAY OF SEPTEMBER, 2017



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