



STATE OF NEW JERSEY

In the Matter of R.T.,  
Department of Corrections

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

CSC Docket No. 2016-4276

Discrimination Appeal

ISSUED: SEP 08 2017 (JET)

R.T., a former Senior Investigator, Parole and Secured Facilities,<sup>1</sup> with the Department of Corrections, appeals the determination of the Director, Governor's Office of Employee Relations,<sup>2</sup> which found that the appellant failed 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 sent an interoffice communication dated April 24, 2015 to M.A., a Chief Investigator, Special Investigations Division (SID), indicating that the appellant had filed an appeal arguing that his non-selection for promotion to Principal Investigator, Parole and Secured Facilities occurred because he was subjected to discrimination and retaliation. Specifically, the appellant alleged that he was not promoted due to a "disparity in uniformity of the promotional process within the Department of Corrections" in retaliation for filing prior discrimination complaints. The appellant also alleged that he was bypassed for promotion on two occasions when S.M. was promoted on February 7, 2015, and when A.A. and R.M. were promoted on April 4, 2015. The appellant's complaint was forwarded to the Equal Employment Division (EED), Department of Corrections. The EED interviewed the appellant,<sup>3</sup> who stated that various individuals, including M.A., D.G., an Assistant Chief Investigator, SID, M.H., a Legal Advisor, V.K., Director of Employee Relations, and former SID Chiefs K.B. and W.E., denied him a

<sup>1</sup> The appellant retired from State service effective July 1, 2015.

<sup>2</sup> Executive Order 44, Paragraph 6, authorizes the Director, Governor's Office of Employee Relations, to issue a determination when a conflict of interest exists.

<sup>3</sup> The record reflects that the appellant was interviewed on May 6, 2015 and on May 8, 2015.

promotion as a Principal Investigator, Parole and Secured Facilities. Due to a conflict of interest, the matter was referred to this agency's Division of Equal Employment Opportunity/Affirmative Action (EEO/AA) for an investigation.<sup>4</sup> After an investigation was conducted, the Director, Governor's Office of Employee Relations reviewed the Division of EEO/AA's findings and issued the determination that is the subject of this matter.

The determination issued by the Governor's Office indicated that the appellant's and S.M.'s names appeared on the February 7, 2015 (PS141572) certification. Further, the appellant ranked second and S.M. was ranked third on the PS141572 list. Promotional interviews for the position were conducted on January 9, 2015 by a group of panelists, and the appellant was one of four candidates considered for a promotion. The panelists asked him the same questions presented to the other candidates, and the appellant's and the other candidates' answers were reviewed independently from one another by the panelists. Based on his responses, the appellant scored 89 points. All of the candidates' scores, including the appellant's, were based solely on their performance and no external influences impacted the scores. In addition, based on their answers, S.M. received the highest score and the appellant received the lowest score. In this regard, the panelists found the appellant's answers were brief, not very detailed, and mediocre/average. In contrast, the panelists found S.M.'s answers were complete and thorough. As such, S.M. was appointed based on his higher score and in accord with the Rule of Three.

Additionally, the appellant's, R.M.'s, and A.A.'s names appeared on the April 4, 2015 (PS150145) certification.<sup>5</sup> The appellant ranked second, R.M. ranked third, and A.A. ranked Fifth. Panelists<sup>6</sup> were again utilized in asking questions to the promotional candidates, and the appellant was asked the same questions as the other candidates. Based on his responses, the appellant scored 90 points placing him second to last in the group of candidates. The panelists stated that the appellant "provided appropriate responses, gave average answers," that he was very laid back during the interview, and he "said the bare minimum." Two of the panelists scored the appellant fourth, and another panelist scored him third. In addition, R.M. scored the highest and A.A. scored the second highest. One panelist stated that R.M. received his score due to his response to a question regarding Security Threat Groups (STGs) when he identified all the STGs, while the appellant received a lower score for his response since he only "got slightly more than half of the STGs correct." Since the panelists found that R.M. and A.A. scored the highest, they were promoted in accordance with the Rule of Three. Moreover, there was no

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<sup>4</sup> In a letter dated May 26, 2015, the Division of EEO/AA notified the appellant that various allegations that he made did not implicate the State Policy, and therefore, would not be investigated.

<sup>5</sup> The first ranked candidate on the PS150145 certification indicated that he was not interested in the position.

<sup>6</sup> The same panelists were used for the PS141572 and the PS150145 evaluations.

evidence that the panelists had any knowledge of the appellant's prior discrimination complaints. Accordingly, a violation of the State Policy was not substantiated.

The appellant previously filed an appeal with this agency alleging that he was improperly not selected for a promotion to Principal Investigator, which was denied. See *In the Matter of R.T., Principal Investigator, Parole and Secured Facilities (PS4821I)*, Department of Corrections (CSC, decided October 3, 2012). The appellant also filed an appeal with this agency that was initially investigated by the Division of EEO/AA based on his non-selection for promotion to Principal Investigator after the interview process that claimed the appellant was improperly bypassed from the PS4821I list, which was denied. See *In the Matter of R.T., Principal Investigator, Parole and Secured Facilities (PS4821I)*, Department of Corrections (CSC, decided June 5, 2013). It is also noted that the appellant previously filed an appeal of his improper reassignment, which was granted. See *In the Matter of R.T., Department of Corrections (CSC, decided September 21, 2011)*. The facts of that matter do not involve the subject of this matter.

On appeal to the Civil Service Commission (Commission), the appellant states that there is a disparity for positions in the Custody Personnel unit and in the SID as a result of collective bargaining agreements. The appellant states that such differences should be addressed by the Commission since the positions are subject to Civil Service rules. The appellant contends that such issues should not solely be left to the union to address. Further, the appellant asserts that such differences are discriminatory under the promotional process.<sup>7</sup>

Additionally, the appellant asserts that the method used by the panelists to determine his scores is flawed under the Rule of Three and are lacking in completeness and fairness to the candidates. The appellant states that this agency maintains rules regarding the promotional process which have a greater scope than just a score based on the panelist's questions. The appellant explains that the panelists did not question his former supervisors or review his work, but rather, the questions were subjective in nature. He adds that the answers to the panelists' questions, such as "how do your co-workers view you," are essentially meaningless for making the determination to appoint a candidate. He contends that, if such a process is continued, this agency should widen its scope in order to be fair for each candidate's individual circumstances. The appellant asserts that, by not taking into account all of his bypasses that occurred, and justifying such bypasses due to the lower scores he received, is not a fair assessment of his situation and results in a form of discrimination. Moreover, the appellant states that, if left unchanged, various employees could be continuously bypassed due to subjective panelists and considering candidates' responses as less important. The remedy he seeks is to

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<sup>7</sup> The appellant acknowledges that the differences are not discriminatory under the State Policy.

have the SID equalize the promotional practices with the Custody Personnel, a retroactive promotion, and other remedies the Commission deems appropriate.

In response, the EED maintains that there was no violation of the State Policy. It asserts that, based on the reasons specified in two determination letters and an investigation that was conducted, the finding that there was no violation of the State Policy should be affirmed. The EED adds that, pertaining to the Senior Investigator titles, candidates for those promotional titles are subjected to interviews prior to appointment. Further, the EED contends that candidates competing for custody staff positions are not subjected to interviews, but rather, must take a Civil Service examination. In addition, the EED explains that the appellant was advised in the May 26, 2015 letter and he acknowledged in his statement on May 8, 2015 that he already filed an appeal in 2011 with this agency based on his non-selection for the Principal Investigator promotion in 2011. The EED adds that, in October 2012, the appellant filed another appeal with this agency, arguing that his non-selection for the Principal Investigator promotion was improper. Additionally, the Division of EEO/AA investigated the appellant's allegations regarding not being promoted to Principal Investigator in 2014 and 2015 and there was no finding of a violation of the State Policy. The investigation revealed that it is general practice and appropriate according to the Rule of Three to appoint the candidate who scores highest, and the candidates with the highest scores were appointed. The EED adds that the evidence showed that the answers he provided did not warrant the highest score based on the independent panelists who evaluated his answers. Moreover, the EED contends the appellant acknowledged that his lack of selection was not based upon any of the protected categories set forth in the State Policy, and he did not provide any evidence to show that he was discriminated or retaliated against as a result of the panel's interview questions.

In response, the appellant asserts that the promotional process for law enforcement personnel serving at the Department of Corrections are administered differently from those serving in the Principal Investigator titles, and therefore, there was significant disparity between two groups that led to limited promotional opportunities for him. The appellant asserts that, although the Principal Investigator title is a Civil Service title, once an employee has been promoted to such a title, candidates are no longer eligible to take a Civil Service promotional examination for custodial supervisory positions. The appellant adds that custodial supervisory positions are not scored by panelists. Further, the appellant asserts that his repetitive bypasses from 2011 through 2015 were intentional and retaliatory in nature. He adds that the appointing authority regularly bypassed him from 2011 to 2015 for multiple promotions to the title of Principal Investigator. The appellant states he is the only employee who was consistently bypassed for promotion from Senior Investigator to Principal Investigator from 2011 to 2015 on the promotional lists, despite that he had above average work reviews from 2009 to

2015. The appellant explains that he passed the promotional interviews and expressed an interest in the promotional opportunities for Principal Investigator. Moreover, the appellant asserts that administration at the appointing authority subjected him to discrimination, as it is the same administration that was in charge in late 2011 and made the decision to bypass him. He adds that the same administration was found in violation of Civil Service rules in 2011. The appellant cites to *Machado vs. New Jersey Department of Corrections*, Docket No. HNT-L-604-09. He also cites to *In the Matter of R.T.* (CSC, decided September 21, 2011), in support of his appeal.

### 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, retaliation against any employee who alleges that she or he 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. Examples of such retaliatory actions include, but are not limited to, termination of an employee; failing to promote an employee; altering an employee's work assignment for reasons other than legitimate business reasons; imposing or threatening to impose disciplinary action on an employee for reasons other than legitimate business reasons; or ostracizing an employee (for example, excluding an employee from an activity or privilege offered or provided to all other employees). See *N.J.A.C.* 4A:7-3.1(h). 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 the appellant has not established that he was subjected to discrimination or retaliation in violation of the State Policy. The underlying determination was correct when it determined that there was no violation of the State Policy. The appellant did not list that he was discriminated against on the basis of any of the above listed categories. In fact, the appellant admits in this matter that his allegations do not invoke the State Policy. Nonetheless, a review of the appellant's allegations do not reveal any information that implicates the State Policy, including that he was retaliated against based on his filing of prior discrimination or other appeals. With respect to his bypasses from the PS141572 and PS150145 certifications, such information, in and of itself, does not establish that he was discriminated or retaliated against. Absent evidence of a violation of a State Policy,

he cannot make arguments that he was improperly bypassed in the context of this forum. Moreover, the record does not reflect that he filed bypass appeals regarding those matters.

Although the appellant states that several employees and panelists prevented him from being promoted, he did not establish a nexus to show that he was discriminated against or subjected to retaliation in violation of the State Policy. His non-selection and questions regarding the panelists, in and of themselves, are not sufficient to show a violation of the State Policy. He also did not present any information to show that the appointing authority's administration discriminated against him. With respect to his argument that the promotional process is different for the Principal Investigator titles and Custody titles, such arguments are of no moment. The appellant did not show that he applied for any other titles other than the Principal Investigator title at issue in this matter. Further, he was given the same opportunity as the other candidates to participate in the promotional process for Principal Investigator, Parole and Secured Facilities. Moreover, he did not provide the names of any witnesses in support of his claims. As such, his arguments are not persuasive. Moreover, Civil Service law and rules provide an appointing authority with wide latitude in how it selects candidates on promotional lists. The Commission will not interfere with how an appointing authority implements that selection process absent a showing that it violated rules or the State Policy. Not one scintilla of evidence to substantiate such a finding has been presented in this matter. An appointing authority is permitted to use different processes when selecting candidates for different titles or even the same titles at different times. So long as a uniform process that did not otherwise violate rules or the State Policy is used for all candidates for each promotional opportunity as it was in this matter, the Commission will not interfere.

Other than the appellant's allegations in this matter, he has failed to provide any evidence that he was discriminated or retaliated against in violation of the State Policy. Accordingly, he has not satisfied his burden of proof in this matter.

### 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 6<sup>th</sup> DAY OF SEPTEMBER, 2017



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