



**STATE OF NEW JERSEY**

In the Matters of E.S. and L.S.,  
Department of Transportation

**FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION**

CSC Docket Nos. 2019-2877 and  
2019-3022

Discrimination Appeals

**ISSUED: OCTOBER 24, 2019 (JET)**

E.S., a Realty Specialist 2, Transportation, and L.S., a Project Engineer, Surface Design, with the Department of Transportation, appeal the determination of the Acting Director, Division of Civil Rights, Department of Transportation, which found that the appellants failed to support a finding that they had been subjected to violations of the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy). Since these appeals involve similar issues, they have been consolidated herein.

E.S., an Asian American Female, and L.S., a Caucasian male, who are married, filed a complaint on October 29, 2019 alleging that they were discriminated against in the workplace based on their marital status. Specifically, the appellants alleged that E.S. requested permission from management and her supervisors in the Division of Right of Way (ROW) to use her husband, L.S., as an engineering witness in order to assist a property owner with questions related to his property. The appellants complained that management denied their request based solely on the fact that she was married to L.S.

The Division of Civil Rights (DOCR) conducted an investigation and did not substantiate that the appellants were discriminated against based on their marital status. Specifically, DOCR indicated in its March 19, 2019 determination that, on April 10, 2018, E.S. offered to provide the assistance of an engineering witness to a property owner. The determination indicated that E.S. sent an e-mail to her supervisor, D.C., a Realty Specialist 4, requesting permission to have the assistance

of an engineering witness, and D.C. forwarded the e-mail request to M.P., a District Program Manager. M.P., in response to the e-mail, asked E.S. why the assistance of an engineering witness was required. In reply, E.S. informed M.P. that she required such assistance because the property owner had presented engineering questions. Subsequently, on May 16, 2018, M.P. asked E.S. to specifically describe what questions the property owner had presented, and in response on May 18, 2018, E.S. stated that such questions were related to “general engineering questions” with respect to the assignment and she wanted to be proactive in order to avoid a lengthy process. Thereafter, M.P. informed E.S. that, although she did not view the assignment in question as complex, she would forward E.S.’s request to P.I., a Supervising Engineer 2, for review. On May 21, 2018, E.S. asked M.P. if supervisory justification would be required for similar requests in the future and indicated that L.S. was available to assist her as an engineering witness.

Additionally, the March 19, 2019 determination indicated that the witnesses confirmed that a workplace procedure exists for Realty Specialist employees to request the assistance of an engineering witness. In this regard, the witnesses confirmed that the procedure consists of submitting such requests to a supervisor, who then forwards it to the District Manager, and the District Manager in turn forwards it to the Supervising Engineer. As such, the investigation confirmed that the appellants’ superiors properly followed procedure in response to E.S.’s request. Further, the witnesses confirmed that it is unusual for engineering witnesses to be present at initial meetings with property owners. Based on a review of the documentation and information provided by the witnesses, the investigation was unable to confirm if the property owner from E.S.’s assignment had requested an engineering witness prior to when she offered such assistance. As such, it was determined that E.S.’s allegations were not consistent with the legitimate business practices, but rather, consisted of her attempt at being proactive. The determination indicated that, with respect to the assignment, E.S.’s supervisors maintained that she should have been able to address the matter without the assistance of an engineering witness as the assignment was not complex. Moreover, the witnesses confirmed that while L.S. made a request to visit the property in question, that request was made prior to when E.S. had submitted her request for an engineering witness.<sup>1</sup> As such, the investigation did not substantiate a violation of the State Policy.

On appeal, appellants assert, among other things, that the March 19, 2019 determination did not consider information from a prior discrimination claim regarding their marital status that was resolved in 2015.<sup>2</sup> In this regard, the

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<sup>1</sup> The March 19, 2019 determination noted that the property only consisted of two small easements, and as such, L.S.’s participation with respect to E.S.’s assignment was not necessary.

<sup>2</sup> The appellants submitted and DOCR reviewed a March 27, 2015 e-mail from V.A., Director, ROW, and an April 30, 2015 letter from the Office of the Inspector General, which reversed the ROW’s

appellants explain that they were previously discriminated against in the workplace based on their marital status and they claim the circumstances in this matter stems from the 2015 discrimination matter. The appellants state that the March 19, 2019 determination completely ignores that they were previously discriminated against in the workplace based on their marital status. In this regard, the appellants maintain that E.S.'s 2018 assignment that is the subject of this matter was a complex project involving the planning and conversion of a dangerous intersection into a "round-about," and as a result, various easements, referred to as "property takings," were acquired from property owners. The appellants add that the project involved working with several easements, including an aerial/utility easement. The appellants claim that requiring E.S. to obtain the property questions in writing from the property owner before any assistance from an engineering witness would be authorized constitutes a new procedure that only applied to E.S.<sup>3</sup> The appellants add that G.T., a Realty Specialist, requested an engineering witness for a separate and less challenging project in the same locale as E.S.'s assignment.<sup>4</sup> Moreover, the appellants assert for the first time on appeal that G.T.'s request for an engineering witness was authorized despite that management did not require any property questions for that assignment in writing.

In response, the DOCR maintains that the investigation was properly conducted and there was no violation of the State Policy. Specifically, it explains that the relevant documentation was reviewed and nine witnesses were interviewed, and there was no evidence that the appellants were discriminated against based on their marital status. DOCR adds that the witnesses indicated that, although there are engineering related issues that a Realty Specialist employee may not be qualified to answer, historically, engineering witnesses are only assigned to assist such employees when issues arise out of their work duties. In this regard, the witnesses confirmed that Realty Specialist employees are initially expected to meet with property owners within the context of their job function, and as such, it is uncommon for an engineering witness to accompany them into the field at the time of the initial meeting. It explains that Realty Specialist employees who were interviewed as witnesses indicated that they did not have a need for engineering witnesses to assist them at the time of an initial meeting with a property owner. In addition, DOCR asserts that E.S. only explained to her superiors that the property owner had "engineering related questions" and she was attempting to be "proactive." As such, there was no substantive evidence to show that the property owner had any property related questions prior to when E.S. offered to provide the assistance of an engineering witness, and therefore, it was

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policy pertaining to married couples not being permitted to work together, and as such, established that the appellants could work together.

<sup>3</sup> The appellants state that the procedure did not apply to any other Realty Specialist employees.

<sup>4</sup> It is noted that the appellants did not provide any substantive documentation on appeal to show that G.S. did not follow procedure with respect to requesting the assistance of an engineering witness, nor did they provide any substantive information to show that G.S.'s separate assignment was less complex than E.S.'s assignment.

determined that E.S. did not have an actual need for an engineering witness. Moreover, there was no evidence in this matter to show that the procedures with respect to requesting the assistance of an engineering witness were changed solely to prohibit E.S. from completing her work duties or that such procedures were used to single out the appellants. Rather, the investigation revealed that E.S. did not properly follow procedure, and as such, her superiors determined that the request for the assistance of such a witness was outside of the usual legitimate business practices of her unit. Although the investigation confirmed that L.S. accompanied G.T. to a project, it was after the initial meeting with the property owner and the property owner had raised legitimate engineering questions about his property. Moreover, DOCR explains that the appellants provide new information in this matter, arguing that G.T. was provided with the assistance of an engineering witness sometime in 2019 prior to meeting the property owner. However, DOCR contends that the new issue was not originally presented by the appellants during the investigation, and as such, that information should not now be considered. It adds that information related to the appellants' prior 2015 discrimination issue, including the Inspector General's report, was reviewed with respect to the present matter, and such information was determined to be important in understanding the history between E.S. and her superiors. In this regard, the Inspector General's report indicated, among other things, that management does not have the authority to ban the appellants from working together simply because they are married, as they do not possess supervisory authority over each other and they work in separate units. DOCR adds that from that time forward the ROW Director did not prohibit the appellants from working together based solely on their marriage. Moreover, DOCR confirms that the investigation revealed that the appellants have in fact worked together on projects after the Inspector General's report was issued.

## 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 Civil Service Commission (Commission) has conducted a review of the record in this matter and finds that the appellants have not established that they were subjected to discrimination based on their marital status in violation of the State Policy. The record reflects that DOCR conducted a proper investigation. It interviewed the appropriate parties including nine witnesses and appropriately analyzed the available documents in investigating the appellants' complaints. The underlying determination was correct when it determined that there was no violation of the State Policy. The appellants' arguments on appeal and the allegations of their complaints do not evidence that they were discriminated against based on any of the above listed protected categories listed in the State Policy. Additionally, a review of the appellants' allegations do not reveal any information that they were retaliated against in violation of the State Policy.

Initially, the witnesses confirmed during the investigation that a workplace procedure exists with respect to Realty Specialist employees requesting the assistance of engineering witnesses, and engineering witnesses are only authorized by management at the time the property owners present property related questions to Realty Specialist employees. Additionally, the record reflects that E.S. did not submit the property owner's questions from her assignment in writing to management, and she only informed management that she was attempting to be proactive in the matter at the time. Since the appellant could not clarify the property owner's questions in writing to management and only indicated that she was being proactive, the Commission is satisfied that she did not properly follow workplace procedure as noted above for requesting an engineering witness. Further, the record reflects that E.S.'s assignment was not viewed by management as difficult and, as such, did not need an engineering witness. While the appellants may disagree with that assessment, even if true, there is no evidence that management made that determination to prohibit E.S. and L.S. from working together. Additionally, the witnesses confirmed that it was unusual for an engineering witness to accompany a Realty Specialist at the time of an initial meeting. Although E.S. suggested L.S., her husband, to serve as the engineering witness, such information is of no moment. Such information, in and of itself, does not establish that E.S. was singled out in the workplace or that the denial was based solely on the appellants' marital status at the time of the incident. The witnesses confirmed that the above procedure was not established solely to prevent E.S. from performing her duties, but rather, it applied to all Realty Specialist employees in E.S.'s unit. Even if management had granted E.S.'s request for an engineering witness, it was at management's discretion to select an employee other than E.S.'s husband to serve as an engineering witness. Moreover, L.S. asked to

visit the property with respect to E.S.'s assignment prior to when E.S. had asked for an engineering witness. As such, there is not one scintilla of evidence to suggest that the denial of the engineering witness had anything to do with E.S.'s marital status.

Additionally, *N.J.A.C.* 4A:7-3.2(m) specifies that a complainant who disagrees with the determination may file a written appeal, which shall include all materials presented by the complainant at the State agency level. As such, the appellants' new assertion on appeal pertaining to G.T.'s assignment will not be considered in this matter, as it was not presented to DOCR during the initial investigation. Moreover, with respect to L.S.'s contentions regarding G.T.'s assignment, he did not provide any substantive evidence in support of his claims, and there is no evidence to establish a nexus between G.T.'s assignment and the appellants' complaints.

Regarding the appellants' arguments pertaining to their 2015 discrimination claim, it appears that they are arguing that they were subjected to retaliation. However, there is no substantive information in this matter to show a nexus that would somehow connect the 2015 matter to the present matter. Initially, the record reflects that, after the 2015 matter was resolved, the appellants have been authorized to work together on various occasions. In this regard, the 2015 matter corrected an erroneous policy that prohibited the appellants from working together on the sole basis of their marriage. However, contrary to the appellants' tenuous claims in this matter, they did not show that E.S.'s current request was denied for invidious reasons based on their marriage. Rather, as noted above, E.S.'s request for an engineering witness, whom she suggested be her husband, was denied as she did not properly follow procedure and because such a witness was not necessary for her assignment. Moreover, there is no information to show that the actions of E.S.'s superiors as alleged by the appellants were anything other than their exerting their legitimate supervisory authority at the time of the incident. Moreover, management or supervisory style is not reviewable under the State Policy unless that style evidences some form of discriminatory conduct under the Policy.

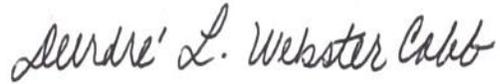
Accordingly, the appellants have failed to provide any evidence that they were discriminated or retaliated against in violation of the State Policy.

### **ORDER**

Therefore, it is ordered that these appeals 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 23<sup>rd</sup> DAY OF OCTOBER, 2019



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