



**STATE OF NEW JERSEY**

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

In the Matter of Y.A., Department of  
Health

CSC Docket No. 2019-3717

Discrimination Appeal

**ISSUED: JUNE 19, 2020**

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Y.A., an Administrative Analyst 4, Fiscal Management with the Department of Health (DOH), appeals the determination of the Chief of Staff, DOH, which found 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 filed a complaint with the Office of Diversity and Equity Services (ODES), alleging that E.A., a Division Director, discriminated against him based on familial status. Specifically, the appellant alleged that E.A. did not interview him for a provisional position in response to a vacancy announcement due to his family status/childcare issues and that E.A. changed his unit scope to prevent him from taking a promotional examination. The appellant claimed that due to his requested adjustment of his work hours for child care needs, E.A. did not interview him for the provisional appointment. Further, the appellant claimed when he was finally interviewed, the other candidates were interviewed by two interviewers, but he was only interviewed by E.A. Additionally, the appellant asserted that E.A. sent him harassing emails regarding his work attendance. With respect to changing his unit scope, the appellant claimed that E.A. changed his unit scope from H200 to H980 to prevent him from taking a promotional examination for Program Manager.

The ODES investigated the complaint and found that E.A. had accommodated the appellant's request to adjust his core work hours from 8 a.m. – 5 p.m. and permitted him to work from 7:30 a.m. to 3:30 p.m. due to child care needs. E.A. denied discriminating against the appellant based on familial status and indicated that his failure to initially interview him was an oversight and was corrected. Regarding monitoring his attendance, the investigation found that since the appellant was a direct report to E.A., it was within his responsibility to ensure compliance with DOH work attendance requirements. Additionally, a witness confirmed that after the appellant's interview, the appellant's qualification and rankings were determined with E.A. Regarding the appellant's unit scope, the investigation found that E.A. denied knowledge of the change in the appellant's unit scope. However, the investigation determined that because of an error in the auto updates as part of the CWA anniversary date automatic salary increment increase, the appellant's unit scope was inadvertently changed to H980. Upon discovery of this error, the appellant's unit scope was changed back to H200. Therefore, the investigation was unable to substantiate the appellant's allegations.

On appeal, the appellant provides an email between him and his supervisor regarding his work hour time change request and his interest in interviewing for the provisional Program Manager appointment. The appellant claims that E.A. violated policy by not scheduling him for a panel interview. He also provides a copy of the discrimination complaint form in which he claims that he was not interviewed based on his familial status. Additionally, the appellant provides copies of emails from E.A. to him in which E.A. indicates that he is ensuring that the appellant is arriving on time if he starts work at 7:30 a.m.

In response, the ODES states that the investigation confirmed that E.A.'s failure to initially interview the appellant for the Program Manager position was an oversight. In this regard, he explained that it "fell between the cracks" and Human Resources ultimately forwarded the appellant's application for review. E.A. also explained that since the appellant wanted to be interviewed as quickly as possible, he conducted the interview by himself and discussed the interview results with J.S., the other member of the interview panel, before making a final decision. E.A. also indicated that the candidate selected for the position would be required to work the core hours, but the appellant's modified work schedule did not factor in the decision not to appoint him as he was sure the appellant "would have adjusted his childcare hours to receive the promotion." J.S. was also interviewed as part of the investigation and indicated that she could not recall why the appellant was not interviewed with the other candidates. J.S. also denied that she and E.A. did not interview the appellant because of his familial status or because he received an accommodation. Further, J.S. indicated that the person chosen for the provisional position was the better candidate. With respect to the unit scope change, DOH's Human Resource director confirmed that it was changed in error during an automatic update action and that it occurred in November 2016. ODES emphasizes that this was 15 months

prior to the vacancy announcement that was posted for the provisional position in February 2018. Further, when the error was discovered, the appellant's unit scope was corrected.

In reply, the appellant takes issue with ODES response, indicating that he failed to provide material facts to demonstrate that E.A. intentionally did not interview him. In this regard, he states that he was in communication with his supervisor on a daily basis confirming his interest to compete for the Program Manager position. Additionally, the appellant states that E.A.'s statement that the person selected for the Program Manager position would be required to work DOH's core hours demonstrates that the initial failure to interview him was intentional.

### 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.

*N.J.A.C.* 4A:7-3.1(b) states that it is a violation of the State 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 for 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. Additionally, 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 and finds that the appellant has not met his burden of proof. The investigation interviewed witnesses, including E.A. who denied that he initially failed to interview the appellant due to his familial status. The Commission disagrees with the appellant's argument that E.A.'s statement that the person selected for the provisional appointment to the Program Manager position would be required to work DOH's core hours shows that he intentionally failed to initially interview him. This oversight, in and of itself, does not demonstrate that the appellant was not initially scheduled for an interview based on his familiar status. Rather, the investigation found that it was an oversight and the Human Resources liaison ultimately forwarded E.A. the appellant's application for final review. Additionally, as the appellant wanted to be interviewed as quickly as possible, E.A. interviewed him by himself and consulted with J.S. prior to making a final recommendation for the candidate for the Program Manager position. In other words, notwithstanding any

oversights or miscommunications, the appellant was in fact interviewed for the provisional position. Regarding the change in the appellant's unit scope, the investigation confirmed that this was an error related to the automatic update and occurred in November 2016, fifteen months prior to the vacancy positing in February 2018. Moreover, agency records confirm that the appellant was admitted to and passed the promotional examination for Program Manager Health/Human Services (PS9189H), which was only open to employees in unit scope H200. Therefore, the appellant was never prevented from taking the promotional examination for the position at issue.

### 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  
17<sup>TH</sup> DAY OF JUNE, 2020




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Deirdre L. Webster Cobb  
Chairperson  
Civil Service Commission

Inquiries	Christopher S. Myers
and	Director
Correspondence	Division of Appeals and Regulatory Affairs Civil Service Commission Written Record Appeals Unit P.O. Box 312 Trenton, New Jersey 08625-0312

c: Y.A.  
Frank Maimone  
Mamta Patel  
Records Center