



STATE OF NEW JERSEY

In the Matter of D.O.,
Department of Military and Veterans
Affairs

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

CSC Docket No. 2021-375

Discrimination Appeal

ISSUED: JANUARY 22, 2021 (JET)

D.O., a Business Manager 2 with the Department of Military and Veterans Affairs, appeals the determination of the Legal Specialist, Office of Equal Employment Opportunity and Affirmative Action (EEO/AA), Department of Military and Veterans Affairs, 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).

The appellant submitted a complaint by way of an December 27, 2019 e-mail, alleging that he was discriminated against on the basis of his disability status by M.O., a Technical Support Specialist 1. The EEO/AA conducted an investigation, including interviewing the appellant and a witness. The investigation revealed that the alleged inappropriate comment was not pertaining to the appellant's disability, but rather, was a comment regarding the employee's perceived inability to understand work-related challenges with respect to the appellant's work assignments. As such, the EEO/AA determined there was no violation of the State Policy.

On appeal, the appellant asserts that he was misled with respect to the investigation process. Specifically, the appellant contends that the EEO/AA ignored his concerns, did not interview a witness, did not conduct the investigation in a timely manner, and the determination improperly focused on work-related issues that had previously been resolved. The appellant asserts that on January 30, 2020, the EEO/AA investigator contacted him with respect to the December 27, 2019 incident where an employee allegedly made mocking and taunting comments

toward the appellant with respect to his hearing disability. The EEO/AA investigator suggested that the appellant should consider an Alternate Dispute Resolution (ADR) process, to which the appellant agreed to participate. The appellant explains that the EEO/AA investigator informed him that he would not conduct any interviews until a later date, and thereafter, on February 26, 2020, the EEO/AA investigator briefly discussed the matter with the appellant. The appellant states that he was led to believe that the ADR process would resolve the matter and any future incidents of similar conduct would be addressed through that process.¹ The appellant contends that he did not have any further contact with the EEO/AA until it issued its determination. The appellant adds that an incident of similar conduct occurred on March 16, 2020 and the EEO/AA officer dismissed the matter without conducting an investigation and it was not addressed through the ADR process. As such, the appellant maintains that the EEO/AA did not properly conduct an investigation into the allegations that he was discriminated against on the basis of his disability.²

In response, the EEO/AA maintains there was no violation of the State Policy. Specifically, The EEO/AA asserts that the appellant and A.S., an Employee Relations Coordinator, were interviewed on February 26, 2020, and A.S. confirmed that M.O. stated that “I don’t think he hears me” with respect to the assignments. The EEO/AA explains that A.S. confirmed that M.O. stated that he made the statement because he was unable to obtain information pertaining to work-related assignments from the appellant. The EEO/AA states that M.O. and A.S. denied referencing the appellant’s hearing disability at the time the incident occurred. As such, the EEO/AA explains that the appellant’s allegations did not implicate the State Policy.

Additionally, the EEO/AA asserts that, by a March 16, 2020 e-mail, A.S. requested the appellant to provide a statement regarding an allegation that he yelled at M.O., and in response, the appellant provided a March 17, 2020 e-mail indicating that he believed M.O. had mocked him when he said “I can’t hear you,” and requested A.S. to consider taking disciplinary action against M.O. The March 17, 2020 e-mail also requested the EEO/AA to re-open the previous EEO/AA investigation. In response, by a March 18, 2020 e-mail, the EEO/AA responded to A.S., and indicated that the March 17, 2020 e-mail identified an employee dispute between the appellant and M.O. pertaining to assignments, and that M.O. had referenced himself when he stated “I can’t hear you.” Moreover, the March 18, 2020 e-mail advised A.S. that the appellant’s request to reopen the previous investigation was not warranted as there was no information which would require it to be

¹ The appellant agreed to the ADR process by way of e-mails dated January 30, 2020 to February 26, 2020.

² A review of the appellant’s e-mails does not evidence that M.O. referenced the appellant’s disability. Rather, the appellant alleged in the e-mails that, in response to his work-related instructions, M.O. stated, “I can’t hear you.”

reopened. Further, the EEO/AA asserts that it was not necessary to interview additional witnesses, as the interviews with A.S. and the appellant, as well as a review of the appellant's initial complaint, provided sufficient information for it to conclude that there was no violation of the State Policy. Moreover, the EEO/AA maintains that the determination appropriately explained why the initial allegations did not substantiate a violation of the State Policy.

With respect to the allegations that the determination was untimely, the EEO/AA asserts that the appellant was not misled regarding the investigation process. The EEO/AA explains that the appellant's initial e-mail complaint with respect to the subject incident was submitted to A.S. on December 27, 2019, and A.S. forwarded the complaint to the EEO/AA Office on December 31, 2019. The EEO/AA Officer informed the appellant by a January 6, 2020 e-mail that it would conduct an investigation, and it sent a January 20, 2020 e-mail to the appellant requesting to schedule an interview. The EEO/AA states that the January 20, 2020 e-mail also advised the appellant of the availability of the ADR process, and the appellant responded that he would consider resolving the matter through the ADR process. The EEO/AA maintains that the investigation was timely completed, and the determination was ready to be issued as of March 6, 2020. However, due to unforeseen administrative circumstances as a result of the Covid-19 pandemic, the EEO/AA's determination was not mailed to the appellant until September 2020.

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:7-3.2(l) provides, in pertinent part, that the final determination shall be completed within 120 days of the initial intake and may be extended up to 60 days by the agency head in cases involving exceptional circumstances. All parties are to receive notice of the request for an extension. *N.J.A.C.* 4A:7.3-2(m)(3) states, in pertinent part, that the appellant shall have the burden of proof in all discrimination appeals.

Initially, with respect to the appellant's arguments that the EEO/AA's determination was untimely issued, the EEO/AA explains in this matter that it conducted an investigation of the appellant's December 27, 2019 complaint and, although a determination was completed by March 6, 2020, it was not issued until September 2020 due to the Covid-19 pandemic. Although the Civil Service Commission (Commission) is concerned that the determination was not issued until

six months after it had been completed, it is clear that the investigation was completed within 66 days of receipt of the appellant's December 27, 2019 complaint, which is well within the proscribed timeframe pursuant to the above rule. As such, the investigation was completed within a proper timeframe. Additionally, it cannot be ignored that the Covid-19 pandemic has caused numerous administrative and departmental delays over the previous months in State government. As a result, it is not unforeseeable that the issuance of the underlying determination in this matter was delayed as a result of the Covid-19 pandemic. Moreover, there is no evidence that such delays adversely affected the underlying determination or that the appellant suffered harm as a result of the delay.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 in violation of the State Policy. The record reflects that the EEO/AA conducted a proper investigation. It interviewed the relevant parties in this matter and appropriately analyzed the available documents in investigating the appellant's complaint. The appellant did not provide any substantive evidence to show that he was discriminated against based on his disability status. Additionally, M.O. and A.S. denied the allegations, and confirmed that M.O. stated "I can't hear you" with respect to his failure to obtain information from the appellant regarding his work assignments. As such, the appellant has not provided any information in this matter to refute the underlying EEO/AA determination, and therefore, the underlying determination was correct when it determined that there was no violation of the State Policy. Additionally, the EEO/AA's action of informing the appellant about the ADR process does not show that the investigation was improperly conducted. Although the appellant acknowledged that he would like to address the matter through the ADR process, the EEO/AA properly conducted the investigation and issued a determination in this matter. Additionally, such information does not, in and of itself, invoke the State Policy. In this matter, the appellant has not provided a nexus between such allegations and any of the above noted protected categories of the State Policy to show that a violation occurred. Moreover, there is no evidence to show that the appellant was singled out in this matter. The appellant did not name any witnesses in support of his claims in this matter, and even if he had, there is no evidence that such witnesses would provide information that would change the outcome of the case. Rather, it appears that M.O. and the appellant had a personality conflict, which is not reviewable under the State Policy. In this regard, disagreements between co-workers cannot sustain a violation of the State Policy. *See In the Matter of Aundrea Mason* (MSB, decided June 8, 2005) and *In the Matter of Bobbie Hodges* (MSB, decided February 26,

³ Nonetheless, the Commission warns the EEO/AA that it should try to complete its investigations and issue final determinations within the 180-day time frame as prescribed in the State Policy as, under certain circumstances, the Commission could find that a delay compromises the thoroughness of an investigation and lead to fines for non-compliance. *See In the Matter of S.J.* (CSC, decided April 9, 2014).

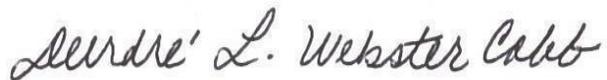
2003). Other than the appellant's allegations in this matter, he has failed to provide any evidence that he was discriminated or retaliated against in violation of the State Policy. Accordingly, he has not satisfied his burden of proof in this matter.

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 20^H DAY OF JANUARY 2021



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